



Say-On-Pay Proxy Voting Reporting Requirements for Form 13F Filers

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On November 2, 2022, the SEC issued a [release](#) (the “Release”) containing rule and form amendments that will require each Form 13F filer, for the first time, to annually report on Form N-PX how it voted proxies on certain executive compensation matters required by Section 14A of the Exchange Act (the “Reporting Requirements”). The votes that must be reported are votes on the approval of executive compensation and on the frequency of such executive compensation approval votes, as well as votes to approve “golden parachute” compensation in connection with a merger or acquisition. Such votes are often called “say-on-pay” votes.

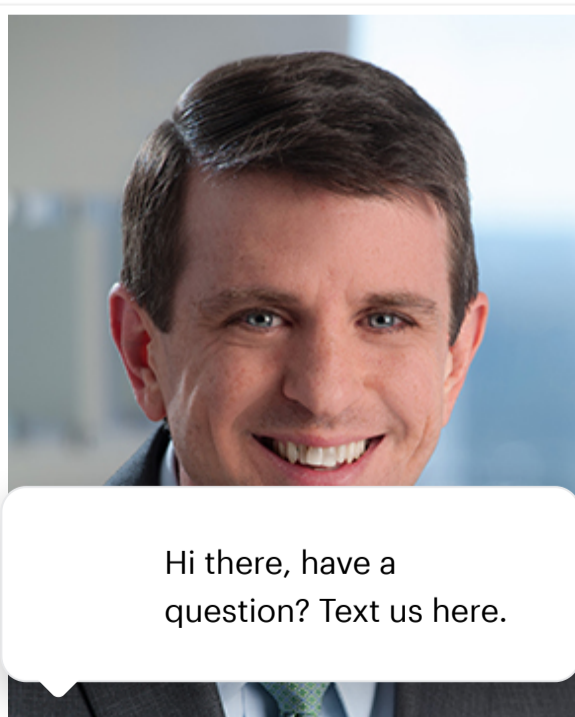
Like Form 13F, the filing requirement applies to each “institutional investment manager,” which generally encompasses any manager that exercises investment discretion with respect to accounts holding U.S. equity securities having an aggregate value of at least \$100 million (each, a “Manager”).

Form N-PX requires a Manager, in reporting its say-on-pay votes, (i) to employ the same language employed in an issuer’s form of proxy to identify the say-on-pay matter and, (ii) for securities that have been loaned, to disclose the number of shares that were loaned and not recalled to vote.

The effective date for the Reporting Requirements is July 1, 2024.

“ Managers will be required to file their first Form N-PX by August 31, 2024, with these reports covering the period July 1, 2023, to June 30, 2024.

Background



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Section 951 of the Dodd-Frank Act added Section 14A to the Exchange Act. Broadly speaking, Section 14A provides that public companies must hold shareholder advisory votes to (i) approve their executive officers’ compensation, (ii) choose the frequency of these votes (specifically, whether they will occur every one, two, or three years), and (iii) approve so-called “golden parachute” arrangements that arise in connection with a merger or acquisition (collectively, “say-on-pay votes”).

Section 14A(d) of the Exchange Act provides that every Manager must report at least annually how it voted on any say-on-pay vote, unless such vote is otherwise required to be reported publicly. The SEC first proposed rule and form changes in October 2010 to implement the Section 14A(d) Manager-reporting requirements, but the SEC did not finalize the 2010 proposals. In September 2021, the SEC published a proposing release, which is now substantially adopted in the Release.

Taking into account comments it received on both the 2010 proposals and the 2021 proposing release, the Release adopts **new Rule 14Ad-1 under the Exchange Act** as well as form changes to require each Manager to report annually using **Form N-PX** how the Manager voted proxies concerning say-on-pay votes. Thus, a portion of the Release is intended to complete the SEC’s implementation of Section 14A.

The remainder of the Release, covering the public disclosure of proxy voting by registered funds, is unrelated to the Dodd-Frank Act and Section 14A of the Exchange Act. Specifically, the remainder of the Release amends Form N-PX to significantly enhance and make more accessible the already public disclosure of registered funds’ proxy

voting on all topics, including voting on ESG matters and say-on-pay votes.

Reporting Requirements

I. Scope of Managers' Form N-PX Reporting Obligations

Although Form N-PX was originally adopted under the 1940 Act, the Release adopts Form N-PX under the Exchange Act and, combined with new Rule 14Ad-1, requires each Manager to use the form to report its proxy voting record regarding say-on-pay votes. Rule 14Ad-1 requires that a Manager report a say-on-pay vote if the Manager "exercises voting power" to influence a voting decision for the security. "Voting power" exists if a Manager has the ability to vote the security or direct the voting of the security, including the ability to determine whether to vote the security at all, or to recall a loaned security before a vote (*i.e.*, effective on or before a record date).

“ Thus, for purposes of Form N-PX, a Manager is deemed to have exercised voting power to influence a voting decision even if the Manager decides not to recall portfolio securities as of the record date for a meeting.

The number of shares that a Manager loaned and did not recall must be reported (see below).

The Release also adopts a "streamlined reporting option for Managers that have a disclosed policy of not voting proxies and, in fact, have not voted proxies during the reporting period." Specifically, the Release amends Form N-PX to add a check-the-box designation to Form N-PX's cover page for such Managers to indicate these facts in a notice report. A Manager filing a notice report is not required to report any information on a security-by-security basis and, instead, is required only to file N-PX's cover page with the appropriate designation and signature.

It is important to note that while the new filing requirement on Form N-PX now applies to Managers, the Form N-PX also covers proxy voting reporting requirements under 1940 Act Rule 14a-4.

II. Identification of Say-On-Pay Proxy Voting Matters

A Manager's reports on Form N-PX must employ the same language employed in an issuer's form of proxy to identify say-on-pay proxy voting matters. This requirement will apply to proxy votes only if a form of proxy in connection with a matter is subject to Exchange Act Rule 14a-4, which requires the form of proxy, or "proxy card," included in the proxy materials to clearly and impartially identify each voting matter and to be in English. In general, Rule 14a-4 applies to every solicitation of a proxy with respect to securities registered pursuant to Section 12 of the Exchange Act. In all other cases, a Manager's report must provide a "brief identification of the matter voted on."

III. Reporting

Form N-PX requires Managers to disclose the number of shares voted (or instructed to be voted) and how those shares were voted (*e.g.*, for or against or abstain with respect to the proposal), as reflected in their records at the time of filing a report on Form N-PX. If a Manager has not received confirmation of the actual number of votes cast, the Form N-PX report instead may reflect the number of shares instructed to be cast on the date of the vote. If the votes were cast in multiple manners (*e.g.*, both for and against), a Manager must disclose the number of shares voted (or instructed to be voted) in each manner. The rules do not contain a de minimis exception for smaller holdings. Form N-PX also requires a Manager to report the number of shares that it loaned and did not recall.

IV. SEC Comments on Securities Lending

As noted above, a Manager is deemed to have exercised voting power if the Manager, among other things, has the ability to recall a loaned security before a vote. Form N-PX requires disclosure of the number of shares the Manager loaned and did not recall in addition to the number of shares a Manager voted. This requirement "is designed to provide transparency into how a reporting person's securities lending activities affect[] its proxy voting."

“ In addition to quantitative disclosures, Form N-PX permits a Manager to provide additional narrative information to assist investors' understanding of its determinations whether to recall a loaned security.

The Release states:

We appreciate that the quantitative disclosures, alone, will not provide the full context of a decision of whether to recall a security on loan. An adviser must make a determination regarding whether to retain a security and vote the accompanying proxy or lend out the security that is in the client's best interest. The considerations underlying this analysis will not be reflected in the disclosed number of shares on loan and not recalled. Reporting persons will, however, have the option to provide this or other information on Form N-PX.

* * *

[W]e recognize that an adviser and its client may agree that the adviser would not vote due to the opportunity costs of recalling the loaned securities in order to vote and that it can be in the client's best interest not to recall the loaned securities. . . . The quantitative disclosure we are adopting is designed to provide investors with additional information about a reporting person's proxy voting activities. The disclosure requirement is not intended to change the analysis reporting persons may undertake currently as to whether to recall a loaned security.

Form N-PX Reporting Data Language

Managers must file reports on Form N-PX in a structured data language. The Reporting Requirements require that Form N-PX reports be filed in a custom eXtensible Markup Language ("XML")-based structured data language created specifically for reports on Form N-PX.

Compliance Date

As noted above, Managers must begin to capture the required information beginning July 1, 2023, to complete and file their first Form N-PX, due August 31, 2024. A Manager's first Form N-PX will cover say-on-pay votes for the period July 1, 2023, to June 30, 2024.

Joint Reporting and Related Form N-PX Amendments

I. Joint Reporting Provisions

To avoid duplicative reporting, Form N-PX implements joint reporting on say-on-pay votes, with related required disclosure to identify all of a Manager's votes. Following the Form 13F model, Form N-PX would permit, but not require, consolidated reporting. Thus:

- A single Manager may report say-on-pay votes in cases where more than one Manager exercises voting power;
- A registered fund may report its say-on-pay votes on behalf of a Manager exercising voting power over some or all of the fund's securities (this provision permits a fund and its adviser to avoid filing a duplicative report regarding the same votes); and
- Two or more affiliated Managers may file joint reports on Form N-PX notwithstanding that they do not exercise voting power over the same securities.

II. Cover Page

Form N-PX's cover page includes a check-the-box item to indicate whether the reporting person is a registered fund or a Manager. The Form N-PX Reporting Requirements are analogous to Form 13F's requirements, permitting notice reports and combination reports. Managers will be required to check a box in order to identify the report as one of the following three types:

- Institutional Manager Voting Report, to be used when a Manager is reporting all of its proxy votes that are required to be reported in a single report where the report contains all say-on-pay votes of the Manager;
- Institutional Manager Notice Report, to be used when the report contains no say-on-pay votes of the Manager because (i) all of the Manager's say-on-pay votes are reported by other affiliated Managers or registered funds under the joint reporting provisions, (ii) the Manager did not exercise voting power for any say-on-pay matters during the reporting period, or (iii) the Manager has a disclosed policy of not voting proxies and did not vote during the reporting period; and
- Institutional Manager Combination Report, to be used when the report contains some say-on-pay votes of the Manager, but additional votes are reported by other affiliated Managers or one or more registered funds under the joint reporting provisions.

III. Summary Page

The Release added a new summary page to Form N-PX to simplify the joint-reporting framework adopted by the Release. This is intended to assist investors to readily identify any Managers with say-on-pay votes included in the Form N-PX report.

Compliance Considerations

As Managers prepare to comply with the Reporting Requirements, they should consider the following:

1. A Manager's first Form N-PX will cover say-on-pay votes for the period July 1, 2023, to June 30, 2024. Therefore, capturing the required information beginning July 1, 2023, is important, although a Manager's first Form N-PX will not be due until August 31, 2024.
2. In planning to meet this new obligation, a Manager should remember that Form N-PX must be filed using an XML-based structured data language created specifically for reports on Form N-PX.
3. The Release also amended Form N-PX to significantly enhance disclosure of registered funds' proxy voting on a variety of topics, including say-on-pay votes. However, the instructions to Form N-PX state that a Manager "is not required to report proxy votes that are reported on a Form N-PX report that is filed by a [registered] Fund." Thus, a Manager is required to report its say-on-pay votes with respect to its clients, excluding any registered funds advised by the Manager (assuming the registered funds report their say-on-pay votes).
4. Each Manager will have to determine the category of Form N-PX it will file: (i) an Institutional Manager Voting Report, (ii) an Institutional Manager Notice Report, or (iii) an Institutional Manager Combination Report (as described above).
5. Managers should consider whether to request confidential treatment for say-on-pay votes. The SEC has indicated that confidential treatment would only be granted in narrowly tailored circumstances, similar to the standard for Form 13F.
6. Managers should consider what written policies and procedures require any changes or additions due to the new Form N-PX Reporting Requirements.

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