



December 14, 2021

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Submitted via e-mail to rule-comments@sec.gov

**Re: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies;
Reporting of Executive Compensation Votes by Institutional Investment Managers - File
Number S7-11-21**

Dear Ms. Countryman,

CFA Institute, the world's largest association of investment professionals, and the Council of Institutional Investors (CII), the voice of corporate governance, respectfully submits this comment letter to the U.S. Securities and Exchange Commission ("SEC" or the Commission") in response to its recently published proposed amendment to Form N-PX.¹

CFA Institute² is a global, not-for-profit professional association with more than 80,000 U.S.- based members who function variously as chief investment officers, investment advisers, and portfolio managers on the buy side of the market; as brokers, investment bankers, and financial analysts on the sell side; and as consultants, chief financial officers, regulators, and academics elsewhere in the financial world. Our membership is bound by a common commitment to the CFA Institute Code of Ethics and Standards of Professional Conduct ("Code and Standards") that requires all members and candidates to

¹ <https://www.sec.gov/rules/proposed/2021/34-93169.pdf>.

² CFA Institute membership includes more than 185,000 investment analysts, advisers, portfolio managers, and other investment professionals in 163 countries, of whom more than 178,500 hold the Chartered Financial Analyst® (CFA®) designation. CFA Institute membership also includes 160 member societies in 77 countries and territories.

"place their clients' interests before their employer's or their own interests."³ CFA Institute speaks on behalf of its members and advocates for investor protection and market integrity before standard setters, regulatory authorities, and legislative bodies worldwide.

CII is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately \$4 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families, including public pension funds with more than 15 million participants – true "Main Street" investors through their pension funds. Our associate members include non-U.S. asset owners with about \$4 trillion in assets, and a range of asset managers with more than \$40 trillion in assets under management.⁴

Summary

The Commission has proposed amendments to Form N-PX that are aimed at enhancing the information mutual funds, exchange traded funds, and certain other funds report about their proxy votes. The proposed amendments would also require institutional investment managers to disclose how they voted on executive compensation, or so-called "say-on-pay" matters. According to the SEC, the amendments would:

- Require funds and managers to tie the description of each voting matter to the issuer's form of proxy and to categorize each matter by type to help investors identify votes of interest and compare voting records;
- Prescribe how funds and managers organize their reports and require them to use a structured data language to make the filings easier to analyze; and
- Require funds and managers to disclose how their securities lending activity impacted their voting.

Comments of CFA Institute and CII

Standardization of the language to describe proxy proposals will help investors better compare how funds vote on particular proposals. The current lack of standardization is not as efficient as it could be, costing investors time and resources to comb through filings and piece together voting results. We support the SEC's plan to require funds and managers (reporting persons) to use the same language as the issuer's form of proxy to identify proxy voting matters.

We also generally support requiring reporting persons to categorize their votes so that investors can concentrate on the topics they find most important. For example, the proposal would include categories for votes related to the board of directors, say-on-pay, shareholder rights, takeover defenses, and environment or social related proposals. We agree, however, with some concerns related to the

³ CFA Institute Code of Ethics and Standards of Professional Conduct:

<https://www.cfainstitute.org/en/ethicsstandards/ethics/code-of-ethics-standards-of-conduct-guidance>.

⁴ For more information about the Council of Institutional Investors (CII), including its board and members, please visit CII's website at <http://www.cii.org>.

proposed categorization framework to list the matters on which funds voted, particularly the ESG-related subcategories. While we appreciate the value of enhancing the standardization and comparability of Form N-PX reports, we believe much of that benefit could be achieved through the use of the proposed higher-level categories and the standardization of proxy voting matters, coupled with the requirement to report in a structured data language.

We believe assigning items to one or more specific subcategories, particularly the ESG-related subcategories, may require a high degree of judgment leading to divergence among Form N-PX filers. We believe such divergence may detract from the subcategories' intended usefulness and potentially mislead users of the reports. Moreover, proxy voting issues, particularly the subject of shareholder proposals, change over time. We believe it is not practical or realistic to expect the Commission to be able to regularly update the rule to account for changes to the subcategories, including both additions and deletions.

If, in the future, investors wish to revisit these subcategories to establish best practices, CFAI and CII would welcome the opportunity to participate in such an effort. The broad categories would then stay largely the same, as dictated by the amended N-PX rule, with investors amending subcategories periodically as needed.

More transparency around securities lending is also a positive development. Currently, there is little transparency around when funds do not cast votes because their securities are out on loan.⁵ We, therefore, generally support the proposed requirement that reporting persons detail the number of shares voted along with the number of shares loaned but not recalled. We note, however, that the proposed disclosure would be far more meaningful if accompanied by a requirement that company proxy statements be delivered before the record date for the annual meeting.⁶ Without such a reform, institutional investors often are unable to determine whether the expected benefit of recalling and voting the shares loaned exceeds the expected benefit of the lending of those shares. And as a result, the inferences that some may draw from the proposed disclosure may be unjustified. We, therefore, believe the SEC should prioritize a rule to require that proxy statements be filed some period of time before the record date of the meeting to which they relate.⁷

As indicated, we also support the proposed requirement to use XML structured data language to make it easier to analyze final voting data. We believe the proposed requirement is critical to extracting useful information from Form N-PX.

We also support the proposed changes to Say-on-Pay vote disclosure. The proposed rule would require managers to report annually on Form N-PX each say-on-pay vote over which the manager exercised voting power. We agree with the proposed amendment to permit joint reporting of say-on-pay votes by

⁵ See, e.g., The Voice of Corporate Governance: The Securities Lending/Voting Tradeoff with Professor Joshua Mitts (CII podcast Nov. 11, 2021) (transcript on file with CII), available at <https://www.cii.org/podcasts> (“One of the biggest challenges with securities lending is just how opaque it is . . .”).

⁶ See, e.g., Scott Hirst & Adriana Robertson, Hidden Agendas in Shareholder Voting 2 (Apr. 23, 2021), available at <https://ssrn.com/abstract=3833304> (“For the 88% of votes with hidden agendas, these investors [share lenders] must make their transfer decisions in the dark, without knowing what they will be voting on.”).

⁷ *Id.* at 4 (Fortunately, there is a straightforward solution to this problem: The SEC could require that proxy statements be filed at least five days *before* the record date to which they relate.”).

managers, or by managers and funds, under identified circumstances to avoid duplicative reporting,⁸ while also requiring additional disclosure to allow identification of a given manager's full say-on-pay voting record. We also support the new requirements for hedge funds and endowments to report their say-on-pay votes in the interest of further transparency. These proposed changes should make voting information clearer to investors, but also to companies and their boards, who will now have an easier time tracking voting results. This will allow companies to better structure their engagement strategies and better focus on the pay related issues of most importance to investors.

We wish to address the concern that the proposed amendments to form N-PX will place a burden in costs and resources on investors in tracking, gathering and disclosing this information. We understand that this cost will be borne most by smaller funds and managers who must meet any N-PX related obligations. We sympathize with this view and acknowledge that there will be some incremental costs with the proposed changes to N-PX. However, many smaller funds and managers may already track or report this information. Thus, we are of the view that the benefit of increased transparency for investor clients outweighs any incremental costs incurred.

Finally, we support the proposal requirement that proxy-voting disclosures be available on the websites of funds, where they can be read digitally and downloaded. This would increase investor access and enable them to find information they desire about a fund's voting history. We note that the proposed requirement to make such information publicly available is generally consistent with best practices for institutional investors.⁹

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On behalf of CFA Institute and CII, we appreciate the efforts of the Commission and its staff and thank you for your consideration of our comments. We welcome the opportunity to discuss the matter with you at your convenience. You may contact us at [REDACTED] and [REDACTED].

Respectfully,

Paul P. Andrews
Managing Director
Research, Advocacy and Standards
CFA Institute

Matt Orsagh
Senior Director

⁸ See, e.g., Letter from Glenn Davis, Senior Research Associate, Council of Institutional Investors to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission 3 (Nov. 12, 2010) (on file with CII) ("We welcome the proposed rule's approach to mitigating duplicative reporting . . .").

⁹ Council of Institutional Investors, Policies on Other Issuers, Best Disclosure Policies for Institutional Investors (Adopted May 1, 2009), https://www.cii.org/policies_other_issues#disclosure_practices_inst_invest ("In order to foster an environment of transparency and accountability, institutional investors—including pension funds, hedge funds, private equity firms and sovereign wealth funds, among others—should make publicly available in a timely manner: . . . Proxy votes cast . . .").

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