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Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

December 14, 2021

Dear Ms. Countryman:

Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (RIN 3235-AK67)

The Alternative Investment Management Association (AIMA)[1] appreciates the opportunity to comment on the U.S. Securities and Exchange Commission's (Commission) proposed rule to amend Form N-PX under the Investment Company Act of 1940, as amended (the "Investment Company Act") to enhance the information mutual funds, exchange-traded funds ("ETFs") and certain other funds currently report annually about their proxy votes and to make that information easier to analyze (the "Proposal").[2] AIMA's members include many U.S. and non-U.S. institutional investment managers that, pursuant to the Proposal, would be required to report annually on Form N-PX how they voted proxies

[1] AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than $2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 170 members that manage $400 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

[2] Proposed rule, Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, 86 Fed. Reg. 57478 (Oct. 15, 2021).

related to shareholder advisories on executive compensation ("say-on-pay") matters. Accordingly, AIMA is well positioned to opine on the Proposal's impact on the investment management industry.

AIMA broadly supports the proposed changes to Form N-PX and the Commission's intent to improve Form N-PX's organization, presentation, accessibility and readability so that investors may receive a more complete picture of funds' and institutional investment managers' voting practices. We therefore encourage the Commission to adopt several provisions as proposed but suggest revising several others before it adopts a final rule. In particular, we suggest that the Commission should:

- as proposed, limit the scope of managers required to file Form N-PX to only those that file Form 13F and also limit their disclosure requirements to only say-on-pay votes, both of which are consistent with the statutory mandate, or alternatively, allow managers to file their say-on-pay votes through a revised Form 13F to relieve the additional regulatory burden that would result from a new, separate filing requirement;
- revise the definition and framework regarding voting power to acknowledge the role of securities lending;
- adopt a *de minimis* threshold for securities holdings considered for filing Form NP-X;
- exempt managers that expressly state they do not vote their shares from the Proposal's quantitative disclosure requirements;
- limit the scope of securities applicable for say-on-pay vote reporting to those held for a period greater than 30 days and filed on Form 13F and therefore exclude "section 12 securities" from the scope of securities applicable for say-on-pay vote reporting;
- revise the list of categories and subcategories of proxy voting matters because it is too granular and duplicative and require issuers to provide the relevant category(s) and subcategory(s) on their forms of proxy;
- eliminate the proposed requirement to disclose the number of shares that were loaned and not recalled because investors will be left with only a view of unvoted shares and an incomplete picture of the important role of securities lending;
- as proposed, adopt the use of a custom XML format for Form NP-X reporting; and
- establish December 31 as the end of the reporting period for reporting say-on-pay votes to align more closely with Form 13F.

These points are discussed in further detail below in the attached Annex with relevant data points provided.

We would be happy to elaborate further on any of the points raised in this letter. For further information please contact Daniel Austin, AIMA's Director of U.S. Policy and Regulation, by [redacted] or phone at [redacted].

Yours sincerely,

Jiří Król
Deputy CEO, Global Head of Government Affairs
AIMA

ANNEX

The Commission solicited responses to 95 questions in the proposing release. We have responded to a few of these specific questions below. We have omitted several questions to which we did not respond and left the numbering of the questions as they appear in the Proposal for easy reference.

3. Is the proposed scope of managers that would be required to report say-on-pay votes on Form N-PX appropriate? Does it sufficiently capture all managers? Does it capture managers that should not be covered? Why or why not?

The Commission proposes to extend Form N-PX reporting obligations for say-on-pay votes to each person that is: (i) an "institutional investment manager" as defined in the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and (ii) files reports under section 13(f) of the Exchange Act.[3] This determination is consistent with the scope of the reporting obligation in section 14A(d) of the Exchange Act[4] as established by section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[5] Investment managers would therefore be required to report votes on the approval of executive compensation and on the frequency of such executive compensation votes, as well as votes on the approval of executive compensation that relates to an acquisition, merger, consolidation or proposed sale or other disposition of all or substantially all of the issuer's assets.[6]

AIMA agrees with the Commission that the proposed scope of managers required to report say-on-pay votes is appropriately tailored to those managers that file Form 13F. This determination accurately reflects section 951 of Dodd-Frank, which limits the scope of say-on-pay vote disclosures to managers that file Form 13F.[7] If the Commission decides to require managers that do not file Form 13F to report say-on-pay votes, it will ignore the clear statutory language in section 951. Moreover, should the Commission require managers that do not meet the 13(f) threshold[8] to file Form N-PX pursuant to the Proposal, it would not only run afoul of section 951, but it could also have a significant economic impact on a substantial number of smaller managers.[9]

6. Should we require managers to report say-on-pay votes on Form NP-X, as proposed? Should managers use a different form for reporting these votes? For example, would there be advantages to requiring managers to report say-on-pay votes on Form 13F instead?

As stated above, we agree with the Commission's proposed scope of managers required to report say-on-pay votes is appropriately tailored to those managers that file Form 13F. The Proposal would,

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3 86 Fed. Reg. 57478, 57481.

4 *Id*.

5 15 U.S.C. § 78n-1(d).

6 15 U.S.C. § 78n-1(a)-(b).

7 15 U.S.C. § 78n-1(d).

8 For example, managers that exercise discretion over less than $100 million.

9 *See* 86 Fed. Reg. 57512-13. The Commission acknowledges that if the Proposal is adopted as is – only applying to managers that are subject to section 13(f) of the Exchange Act – it will not have a significant economic impact on a substantial number of small entities. *Id*. at 57512. If, however, the Commission ultimately decides to adopt a lower threshold for reporting say-on-pay votes on Form N-PX, smaller managers could be adversely impacted.

however, require managers to establish, manage and submit a new, additional reporting form, adding to their already heavy reporting burdens. It would be substantially less burdensome if managers were permitted to report their say-on-pay votes on an amended Form 13F, instead of on Form NP-X. Investors would still receive the same level of information the Commission seeks to provide, and it would be easier to cross reference with other information contained on Form 13F.

7. In addition to requiring managers to report their say-on-pay votes, should we require managers to report any votes other than say-on-pay votes? If so, please identify any other votes that managers should be required to report and the basis for the Commission to introduce such a reporting requirement.

AIMA agrees with the Commission's preliminary determination to limit the scope of votes managers are required to report on Form N-PX to only say-on-pay votes. When the Commission issued its 2010 proposal to implement section 951, most commenters expressed overall support the for the modifications to Form N-PX;[10] meanwhile, only two commenters supported broadening managers' disclosures beyond say-on-pay votes.[11] Section 951, however, does not contemplate requiring managers to disclose any votes beyond say-on-pay votes. Moreover, the titles of both section 951 and its corresponding section in the U.S. Code address executive compensation, not other shareholder vote-related issues or topics.[12] It is therefore clear that Congress intended managers to report only their say-on-pay votes.

11. Should we, as proposed, consider a manager to exercise voting power when it has the ability to determine not to vote or to recall loaned securities? Would this provision present challenges to managers? If so, what are those challenges, and are there challenges to the reporting requirement that would address such challenges?

The Commission is proposing to require that a manager report say-on-pay votes for a security only if the manager "exercised voting power" over the security.[13] The Proposal explains that voting power would exist when 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.[14]

We believe the Commission should revise its proposed voting power definition and framework as it applies to managers that have the ability to recall a loaned security before a vote. As proposed, these managers would be required to report that they abstained from voting.[15] In our response to question 35 below, we explain that the Proposal ignores the important role of securities lending and the analysis and balance funds and managers must undergo in determining whether to recall a security

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[10] 86 Fed. Reg. 57481.

[11] *Id*. at 57482.

[12] Section 951 is entitled "Shareholder Vote on Executive Compensation," and section 78n-1 of U.S. Code title 15 is entitled "Shareholder approval of executive compensation."

[13] 86 Fed. Reg. 57482.

[14] *Id*.

[15] *Id*. at 57487.

to vote. Therefore, if the Proposal is finalized as is, investors will be left with only a view of the number of unvoted shares and an incomplete picture of the role of securities lending.

14. Should we permit managers to omit votes otherwise reportable where the manager's ownership is below a specific threshold? What are the potential advantages or disadvantages if we permit a manager that holds, on the record date, fewer than 10,000 shares and less than $200,000 aggregate fair market value to omit say-on-pay votes on such securities? Would such an exception impede investors from understanding how shares were voted? Why or why not?

The Commission is proposing to require that a manager report say-on-pay votes with respect to "any security" over which it meets the voting power test described in the Proposal.[16] The Proposal does not align the scope of securities for Form NP-X reporting with those reported on Form 13F.[17] The Commission justifies this conclusion because "a *de minimis* threshold could reduce the value of the say-on-pay disclosure because a fund or manager's full voting record would not be available when the threshold is applied."[18]

We believe the Commission should adopt a *de minimis* holdings exception and omit from consideration holdings fewer than 10,000 shares or less than $200,000 aggregate fair market value. Holdings that fall below this threshold are immaterial when their proxies are cast because it is highly unlikely that such an inconsequential amount will change, or even impact, a vote's result. Also, as acknowledged by commenters to the 2010 proposal, establishing a *de minimis* threshold would reduce record keeping and reporting burdens on managers for smaller position sizes.[19]

15. Should we permit managers to omit votes on a particular type of security? Do managers have substantial holdings of securities that are not "section 13(f) securities" as defined by 17 CFR 240.13f-1(c), but are registered pursuant to section 12 of the Exchange Act and thus would have say-on-pay votes? Would there be potential advantages or disadvantages if we required managers to report only their say-on-pay votes on section 13(f) securities? Would such an approach be consistent with the public interest, and how would it impact investor protection?

The Commission is proposing to require that a manager that files Form 13F report say-on-pay votes with respect to "any security" over which it meets the voting power test described in the Proposal.[20] The Proposal cites two commenters to the 2010 release that supported the requirement that managers report any security; however, it also cites several commenters that requested the Commission limit the reporting obligation to securities reported publicly on Form 13F.[21] The

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16 86 Fed. Reg. 57484.
17 *Id.*
18 *Id.*
19 *Id.*
20 *Id.*
21 *Id.*

Commission rejects these commenters' request to limit the reporting obligation to securities reported publicly on Form 13F and explains that such a limitation could exclude some say-on-pay votes.[22]

Despite the Commission's decision in 2010 and preliminary determination in the Proposal, AIMA believes the Commission should limit managers' reporting obligation to only those securities reported on Form 13F. This could exclude some say-on-pay votes and impede some investors' ability to access this data; however, requiring managers to report all securities – including securities exempt from registration under section 12 of the Exchange Act ("section 12 securities") – could ultimately mislead investors and create additional regulatory costs for managers.

We acknowledge that managers may have holdings of section 12 securities with say-on-pay votes attached. Managers, however, would likely face difficulties sourcing the necessary information on section 12 securities to comply with the Proposal because, at present, many section 12 securities suffer from a lack of adequate and reliable data.

If the Commission proceeds as proposed and includes section 12 securities within the scope of the Form N-PX reporting obligation, managers would be required to rely on this often-skewed data and could ultimately file incomplete or inaccurate reports. This would thwart the Commission's goal of improving investor access to accurate and timely say-on-pay vote disclosures. Moreover, managers would incur additional costs trying to gather, analyze and report data on section 12 securities for purposes of filing Form N-PX.

On the contrary, Form 13F securities data is adequate and reliable and should serve as the basis for managers filing Form N-PX. Section 13(f) securities include equity securities that are "admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered securities association."[23] Because 13(f) securities are categorized as such and therefore must meet certain registration and reporting requirements pursuant to Commission regulations, the data with respect to these securities is more comprehensive and reliable for managers that would file Form N-PX.[24]

17. Should we expand or limit in any other way the securities with respect to which managers would be required to report say-on-pay votes?

As previously stated in our response to question 15, the Commission should limit managers' reporting obligation to only those securities reported on Form 13F. We would also encourage the Commission to apply such reporting obligation to only those securities held for a period greater than 30 days. Should the Commission require managers to report these short-term holdings, their proprietary trading strategies will be available to the broader market, and the significant amount of money, research and time they have spent developing these strategies will be rendered pointless. Furthermore, a manager's investors have very little financial exposure to the underlying issuer's

[22] *Id*.

[23] 17 C.F.R. § 240.13f-(c).

[24] *Id*. *See also* 15 U.S.C. § 78m.

shares that are held for less than 30 days.

18. Should we modify the proposed approach for managers that do not vote their shares? For example, should we permit these managers to not file Form N-PX reports? Should we exempt non-voting managers from certain disclosure requirements on Form N-PX concerning the various securities they did not vote on say-on-pay matters during the reporting period? What conditions or limitations, if any, should apply? For instance, to rely on a modified approach, should a manager be required to disclose to its clients that it does not vote? Would a modified approach be particularly applicable to certain categories of managers, such as those whose trading strategies involve relatively short-term ownership?

AIMA believes the Commission should modify the proposed scope of managers required to file Form NP-X to exempt those managers that do not vote their shares. Many registered investment advisers ("RIAs") do not vote their proxies, so if these managers are required to file Form NP-X, they will only be disclosing their security holdings, not the quantitative voting data the Commission seeks to address.

RIAs are required to provide a description of their proxy policies and procedures on Form ADV, in which many RIAs expressly state that they do not vote their proxies. Because Form ADV is publicly available and must be delivered to prospective and existing clients, the investing public can access Form ADV and ascertain why a particular RIA did not file Form NP-X. The Commission should therefore rest assured that if it chooses to exempt these RIAs from the Proposal's Form NP-X reporting requirement, investors and the public will not be left questioning why a particular manager has not filed Form NP-X.

24. Do the proposed categories or subcategories adequately capture the range of proxy voting matters? Are there other categories or subcategories of votes that we should require reporting persons to identify? Will these categorizations enhance the usefulness of the information reported on Form N-PX for investors and facilitate the comparison of reporting persons' proxy voting records? Are there categories or subcategories we should eliminate?

The Commission is proposing that Form N-PX reporting persons select from 17 standardized categories, including say-on-pay votes, to identify the subject matter of each of the reported proxy voting matters, with some categories containing multiple, specific subcategories.[25] Reporting persons would be required to select multiple categories or subcategories for the matter, if applicable; or if a vote does not fall within a specified subcategory, select the 'other' subcategory and provide a brief description.[26]

AIMA encourages the Commission to revise its proposed list of categories and subcategories, because they are too granular and duplicative, to provide greater clarity for managers and funds. The Commission should consider combining some categories and subcategories and distilling them into a more condensed, clearer list. The Proposal lists 17 categories, with some containing up to a dozen

[25] 86 Fed. Reg. 57486-87.
[26] *Id*. at 57487.

subcategories.[27] Because of the multiple categories and subcategories, it is highly likely that funds and managers may differ as to how a vote is categorized and subcategorized. They may also differ as to how a vote on a particular subcategory is described.[28]

Furthermore, the Proposal acknowledges that funds and managers would face additional internal and external costs to comply with their Form N-PX requirements, costs that would ultimately be passed on to the fund's or manager's shareholders.[29] Notwithstanding the quantifiable costs, fund and manager personnel tasked with categorizing votes for Form N-PX will likely either: (i) choose to dedicate significant time to analyzing the vote and attempting to categorize and subcategorize it appropriately, while simultaneously losing precious time on other work; or (ii) briefly analyze the vote but because of the dozens of categories and subcategories, abandon the effort, nonchalantly categorize and subcategorize the vote, and return back to other work. Both scenarios could lead to inconsistent filings and be a disservice to investors trying to ascertain and/or compare how a fund or manager has voted.

Ultimately, this broad scope of potential categories and subcategories from which to select would detract from the Commission's stated mission to "help investors understand how funds and managers are voting by helping them readily identify votes on matters . . . [and] allow investors to compare how different managers or funds votes on specific types of matters."[30] With a more streamlined list, investors will be better positioned to understand and compare funds' and managers' voting decisions, as well as make their own investment decisions, because funds and managers will be providing consistently categorized filings.

The Proposal would also require reporting persons to use the same language (description and ordering) from the issuer's form of proxy to identify proxy voting matters on Form N-PX.[31] To simplify Form NP-X reporting, the Commission could also require issuers to provide the relevant category(s) and subcategory(s) on each proxy voting matter. If issuers are required to label their forms of proxy with the relevant categories and subcategories, it will help mitigate the confusion and inconsistencies that may arise from funds and managers attempting to correctly categorize and subcategorize the language on each form of proxy.

35. Should we require disclosure of the number of shares a reporting person loaned and did not recall, as proposed? Is this information valuable to investors? Does the value of the

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[27] *Id*. at 57486.

[28] For example, an in-house compliance associate working on Fund A's Form N-PX filing may select the security issuance category and provide a description thereof because it does not fit neatly within the prescribed subcategories. Meanwhile an in-house attorney at Fund B may believe the same vote should be categorized as a capital structure issue.

[29] 86 Fed. Reg. 57504, 57506.

[30] *Id*. at 57487.

[31] *Id*. at 57486.

information differ between institutional and retail investors? Are there any changes we could make to enhance the utility of the information for investors?

The Commission is proposing to require disclosure of the number of shares the reporting person loaned and did not recall.[32] According to the Proposal, this requirement is designed to provide transparency into how a reporting person's securities lending impacts its proxy voting.[33] Instead, however, this aspect of the Proposal will only cloud an investor's insight into a reporting person's lending activities. We therefore request that the Commission eliminate this requirement before adopting a final rule.

Securities lending plays an important role in maximizing value for fund investors, yet the Proposal seems to ignore this key function. The Proposal also ignores the extensive analysis funds conduct when considering whether or not to recall shares in a company in order to vote them. Moreover, the Commission seems to believe that shares can be loaned, recalled and seamlessly loaned again after the vote record date.[34] This belief, however, does not reflect market realities. Once recalled, market participants may face difficulties loaning the securities again and thus miss out on additional revenue. e.g., the party to which the security was originally loaned may have borrowed the security from another market participant in the meantime.

It is therefore unclear to what extent the disclosure of the number of shares loaned but not recalled will provide additional transparency for investors. On the contrary, if the Proposal is finalized as is, investors will be left with only a view of the unvoted shares and an incomplete picture of the role of securities lending. Furthermore, other avenues already exist for investors to access and analyze a fund's securities lending practices.[35] These options provide both quantitative and qualitative data on securities lending and are more informative to investors about a fund's lending practices than a revised Form NP-X. Ultimately, Form NP-X is not the appropriate venue to require additional disclosures on securities lending.

37. We understand that proxy statements typically are not delivered until after the record date. Does this create challenges for reporting persons to determine whether they want to recall loaned securities before the record date? If so, how might these challenges affect disclosure of the number of shares loaned and not recalled, or other aspects of this

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[32] *Id*. at 57489.

[33] *Id*.

[34] *Id*. at 57505.

[35] First, funds organized under the Investment Company Act will often provide securities lending information in their prospectus as well as information in their statement of additional information. Lending information can also be found in a fund's financial statements, including the number of shares on loan and other quantitative descriptions of the fund's lending over the period covered by that particular statement. Second, the Commission's Form N-PORT lists securities on loan, collateral received for those loans and information on the borrowers. Form N-CEN lists a fund's lending agents and the parameters of their agreement, e.g., how the lending agent is compensated, if there is an indemnity and what it covers and more. Finally, many fund managers' investment stewardship policies, which describe their proxy voting practices, will have a statement on lending and how they balance recalling shares and proxy voting.

proposal? Are there any changes we should make to the proposed rule to recognize these challenges?

The Commission correctly notes that proxy statements typically are not delivered until after the record date.[36] Because this is the case, fund managers must weigh the potential lending revenue that can be earned by leaving a share on loan against recalling it to vote. This analysis is conducted without any knowledge of what will be on a proxy statement and whether voting the recalled shares will ultimately prove impactful. The proposed requirement to report shares on loan but not recalled does not provide the investor with any information about this deliberation. This is a delicate balance, and the Proposal does not change it.

If finalized as proposed, Form NP-X filings will be accurate and complete in the sense that the loan number is easy to calculate, but they simply will not be informative like the Commission hopes. The Proposal could also have a chilling effect on lending practices if investors misinterpret the figures reported on Form NP-X.

71. Should we require, as we are proposing, Form N-PX reports to be filed in a custom XML language? Is a custom XML language the appropriate type of data language for Form N-PX reports? Why or why not? If another structured data language would be more appropriate, which one, and why?

AIMA supports the Commission's proposed change to require reporting persons to file reports on Form NP-X in a custom eXtensible Markup Language (XML)-based structured data language created specifically for reports on Form N-PX (custom XML).[37] We agree that use of custom XML language will make it easier for reporting persons to accurately prepare and submit the information required by Form N-PX and make the submitted information more useful.

76. Should we, as proposed, require managers to report their say-on-pay votes annually on Form NP-X not later than August 31, for the most recent 12-month period ended June 30? Should we instead require reporting as of some other period end date (e.g., May 31 or December 31), or with a shorter or longer lag period after the end reporting period (e.g., 45-day lag period to align with Form 13F)?

As discussed in several of our responses above, we believe the Commission should strive to align managers' say-on-pay reporting with the requirements and parameters of Form 13F. Accordingly, we encourage the Commission to set December 31 as the end of the reporting period, with a 45-day lag period to align with Form 13F. This will enable managers to streamline this new reporting obligation while ensuring that investors are receiving enhanced transparency.

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[36] 86 Fed. Reg. at 57490.

[37] *Id*. at 57495.