

Corporate Governance

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VIA E-MAIL: rule-comments@sec.gov
December 14, 2021

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

RE: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies;
Reporting of Executive Compensation Votes by Institutional Investment Managers, File No. S7-11-21

Dear Ms. Countryman:

This is to supplement my December 13 comments on the rulemaking and the comments I filed earlier today, incorporating by reference comments by Morningstar. As the deadline for comments nears, I think back on my petition to the SEC on this subject, which sought close to real-time disclosure within 24 hours of voting. See <https://www.sec.gov/rules/petitions/2019/petn4-748.pdf>. The more I think about it, the more I believe that is the right approach.

In the intervening period, I had settled on the idea that 2-4 filings a year would serve if funds and managers posted voting results in close to real-time on their websites. However, on further reflection, that would not address the primary problem, which is the need for *standardized* machine-readable data so that beneficial owners and analysts can easily *compare* across funds and managers, not once a year or twice a year but continuously. No company I know does quality control once, twice, or four times a year. It is a continuous process. We do not wait another year or even another quarter to fix problems.

Even if close to real-time, data posted to individual websites fails to solve the *comparability* problem since individual websites can use data and formats that are not easily compared. They can even be copyrighted as disclosing proprietary information, which might make it illegal to compare easily.

Funds and managers should be required to submit N-PX filings to the SEC's EDGAR system in something close to real-time. Their websites should then link to that feed at the SEC. Such a system may be slightly more costly to set up. However, once established, it should be less expensive because the whole process will be automated. Maintenance would be mostly via software updates.

As I wrote in my petition, current filings do not meet the original rule's intent to "enable fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies." Filings do not shed light on mutual fund voting to "illuminate potential conflicts of interest and discourage voting that is inconsistent with fund shareholders' best interests." They do not enable shareholders to "evaluate how closely fund managers follow their state proxy



voting policies, and to react adversely to fund managers who vote inconsistently with these policies.”¹

N-PX proxy voting data are currently displayed in user-unfriendly format. I know of no retail investors using such information on their own. Investors need to hire a researcher or subscribe to a data provider, such as Proxy Insight, to make sense of the filings.² The average 401(k) account balance is less than \$40,000 for those under age 40,³ about the time many employees typically get serious about investing for retirement. Therefore, hiring a researcher or subscribing to a database to conduct their research would not be cost-effective for most individuals.

Currently, collected data is underutilized because it is not freely available in a user-friendly format. Year-old data is also seen as out-of-date in an age when most news arrives instantaneously on social media. Real-time proxy voting disclosure by funds would allow easy comparison of voting records when writing the news, making investment decisions, or voting proxies. Those activities happen every day, not once a year, twice a year, or four times a year.

If proxy votes are reported by funds and managers every day, that information will also be picked up in the news and social media every day. Investors would have a heightened sense of the meaningfulness of proxy votes. They would search out funds that vote in alignment with their values, and they would be more inclined to vote any stock they hold more directly themselves

When I was a child, newspapers came once or twice a day. Stock certificates were signed over to the new owner. Now it is all digital, and transactions are close to instantaneous. The news is continuous. Reporting does not stop. Proxy voting is a newsworthy event. Reporting votes should never stop either. If it did not stop, we would be more likely to witness annual meetings held more evenly spaced throughout the year. Proxy voting policies would be revised based on developments as they arise, not a year later.

The SEC could accomplish the original goals of Rule 30b1-4, including the empowerment of typical investors, by revising its N-PX reporting rules to require filings in real-time and in a user-friendly format. One important field left off every voting item in the SEC’s proposed schema is a reason code. The N-PX should allow funds and managers to explain why they voted as they did. For example, see votes reported by Calvert⁴ or Norges.⁵ Those funds typically announce each vote in advance of meetings and why they voted as they did.

As indicated in my letter of December 13, funds that typically announce their votes in advance should be included on Investor.gov so that retail shareholders have the advantage of being able to see how others voted and often why they voted that way. The explanation field for each vote

¹ “Final Rule: Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies,” *U.S. Securities and Exchange Commission*, Modified September 23, 2003. <https://www.sec.gov/rules/final/33-8188.htm>.

² proxyinsight.com

³ According to Fidelity, as cited by Becca Stanek, “The Average 401(k) Balance by Age,” *Smartassets*, August 20, 2018. <https://smartasset.com/retirement/average-401k-balance-by-age>.

⁴ <https://vds.issgovernance.com/vds/#/MTY0MQ==/>

⁵ <https://www.nbim.no/en/the-fund/responsible-investment/our-voting-records/>



should be voluntary, at least at first. Not every fund or manager can easily explain how their vote aligns with their voting policy or fiduciary duty, especially if they have given voting little thought.

Of course, I would prefer real-time filings to be disclosed as soon as votes are cast. However, I understand that many funds and managers do not want to be bothered by people trying to get them to change their votes, so the SEC could allow automated feeds to be delayed for a few days or until a few days after votes are due.

Once all funds and managers are reporting N-PX required fields continuously, that information will begin to permeate the news and the internet. More funds and managers will then see the competitive advantage of announcing their votes in advance of meetings and filling out those reason code explanations. That will further drive competition to align votes with the values of beneficial owners and will provide valuable information to retail shareholders analyzing their proxies. Voting will be more discussed, debated, and more thoughtful.

I urge the Commission to adopt its proposed rules, incorporating my suggested amendments as outlined above, in my comments early today and in my December 13 comments. Please do not hesitate to contact me if I can further assist. Thanks for your consideration.

Sincerely,

James McRitchie
Shareholder Advocate and Publisher