

November 16, 2010

*Via Electronic Filing*

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: Reporting of Proxy Votes on Executive Compensation and Other Matters  
(File No. S7-30-10)**

Dear Ms. Murphy:

The Investment Adviser Association (“IAA”)<sup>1</sup> appreciates the opportunity to comment on the Commission’s proposed rule and form amendments under the Securities Exchange Act of 1934 (Exchange Act) to facilitate the disclosure of certain votes by institutional investment managers that are subject to Section 13(f) of the Exchange Act.<sup>2</sup>

Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) added new Section 14A to the Exchange Act, which requires issuers to provide shareholders with a vote on certain executive compensation matters and institutional investment managers subject to section 13(f) to report at least annually how they voted on those matters. Specifically, Section 14A(a) requires that a proxy or consent or authorization for an annual or other meeting of shareholders for which the Commission’s proxy solicitation rules require compensation disclosure to include: (1) not less frequently than once every three years, a separate resolution subject to shareholder vote to approve executive compensation; and (2) not less frequently than once every six years, a separate resolution subject to shareholder vote to determine whether the required executive compensation votes will occur every one, two, or three years. Section 14A(b) also requires that any proxy or consent or authorization relating to a meeting at which shareholders are asked to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of an issuer to include a separate resolution subject to shareholder vote to approve the

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<sup>1</sup> The IAA is a not-for-profit association that represents the interests of investment adviser firms that are registered with the SEC. For more information, please visit our web site: [www.investmentadviser.org](http://www.investmentadviser.org).

<sup>2</sup> *Reporting of Proxy Votes on Executive Compensation and Other Matters*, Release No. 34-63123 (Oct. 18, 2010) (Section 14A Proxy Voting Disclosure Release).

executive compensation agreements and understandings that relate to the transaction. These votes required under Section 14A(a) and (b) (Section 14A Votes) are advisory in nature.

Section 14A(d) requires institutional investment managers subject to Section 13(f) of the Exchange Act (13(f) Institutional Managers) to report at least annually their proxy voting records with respect to Section 14A Votes. To facilitate the disclosure of these advisory votes, the Commission is proposing new rule 14Ad-1 under the Exchange Act to require 13(f) Institutional Managers to file their records of Section 14A Votes with the Commission annually on Form N-PX.<sup>3</sup> At the same time, the Commission also is proposing certain amendments to Form N-PX.

The IAA appreciates the Commission's prompt proposal regarding the method by which 13(f) Institutional Managers will be able to disclose their proxy voting records with respect to Section 14A Votes. We are seeking certain clarifications and confirmations with respect to the proposal and requesting additional time for compliance with the reporting requirements.

#### Reporting of Proxy Votes within a Corporate Group

The proposal provides a mechanism to prevent duplicative reporting similar to that employed by Form 13F, which permits – but does not require – a single manager to report on securities with respect to which multiple managers exercise investment discretion. With respect to this proposal, we understand that in situations in which a holding company would be a 13(f) Institutional Manager because of its control over other managers that exercise investment discretion, this method would permit, but not require, the parent to report the proxy voting record of its affiliates where they share voting authority. Conversely, a 13(f) Institutional Manager that is the parent of multiple subsidiaries that exercise investment discretion may choose to have the subsidiaries report the Section 14A votes on its behalf.

We support this flexibility for 13(f) Institutional Managers because different corporate groups may have varying arrangements with respect to proxy voting. Within certain corporate groups, there may be shared proxy-voting decision-making through a corporate-wide proxy voting committee. In such cases, it may be appropriate for the parent company to file Form N-PX information. In other situations, however, investment managers within a corporate group may not share information about voting decisions and subsidiaries may wish to file their own Form N-PX. In the context of Schedules 13D/13G, the Commission has recognized that corporate groups can have different structures for voting and investment and where the “organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining whether a filing threshold has been exceeded and the aggregate amount owned by the controlling persons.”<sup>4</sup> We urge the

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<sup>3</sup> Form N-PX is currently used by registered management investment companies to file their complete proxy voting records with the Commission.

<sup>4</sup> *Amendments to Beneficial Ownership Reporting Requirements*, Rel. No. 34-39538 (Jan. 12, 1998).

Commission to adopt its proposed flexible approach and permit investment managers within a corporate group to report either at the holding company level or at the level of the subsidiaries. Moreover, we request that corporate groups be permitted this flexibility regardless of whether the holding company and its subsidiaries share voting authority because (depending on the particular group) it may be operationally more efficient for the holding company or its subsidiaries to submit Form N-PX. We request that the ability to aggregate or disaggregate information within a corporate group be explicitly included in the instructions to Form N-PX.

### Reporting of Shared Voting Authority

We also request that the Commission clarify that 13(f) Institutional Managers do not have to report separately shares over which they have shared voting power if the 13(f) Institutional Managers share voting power with entities that do not have separate filing obligations under Section 14A (*i.e.*, are not 13(f) filers).<sup>5</sup> We understand that the SEC may not have intended to require separation of votes for which a 13(f) Institutional Manager is not reporting on behalf of another 13(f) Institutional Manager.<sup>6</sup>

In cases where an investment manager may share voting power with a third-party entity that is not subject to Section 13(f) of the Exchange Act (*e.g.*, a trustee for a trust for which the investment manager manages the assets), we are of the view that separate reporting of shares with shared voting power would not be helpful to users of Form N-PX, may lead to confusion, and cause unnecessary compliance burdens. The purpose of Form N-PX reporting is to disclose how the 13(f) Institutional Manager itself voted; whether such voting occurred pursuant to sole or shared voting authority with non-filing entities does not add value to that disclosure. We request that the Commission clarify in the adopting release that 13(f) Institutional Managers do not have to report separately shares over which they share voting power with non-13(f) filers and make necessary changes to the Instructions to Form N-PX to avoid confusion.

### Compliance Date of Rule 14Ad-1

In the proposal, the Commission states that it expects to require 13(f) Institutional Managers to file their first reports on Form N-PX covering Section 14A Votes at meetings that occur on or after January 21, 2011 (the first date on which the voting requirements of Section 14A apply to shareholder meetings) and ending on June 30, 2011. Given the potentially significant systems changes that must be implemented to capture these new

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<sup>5</sup> 13(f) Institutional Managers are required to identify entities with which they may have shared voting power on the Form N-PX only if the 13(f) Institutional Managers are making filings on their behalf. The requirement to identify any other Institutional Manager is intended to help users of Form N-PX to readily identify all reports that contain Section 14A Votes of a particular manager.

<sup>6</sup> The confusion is in part created by the proposed text of the Special Instruction D.4., which states that “an Institutional Manager must report the number of shares over which the Institutional Manager had sole voting power separately from the number of shares over which the Institutional Manager had shared voting power” without reference to reports made on behalf of another filer.

Section 14A Votes within a short period of time (particularly for institutional managers that have not previously filed Form N-PX), we request that the Commission permit 13(f) Institutional Managers to disclose Section 14A Votes starting with meetings occurring on or after July 1, 2011 (the start of the new reporting period of Form N-PX).

We believe that this initial transition period is analogous to the situation in which an institutional manager makes its initial Form 13F filing. In that circumstance, the Commission has proposed not to require an institutional investment manager to file a Form N-PX report for the twelve-month period ending June 30 of the calendar year in which the manager's initial filing on Form 13F is due. According to the Commission, this transition rule is intended to provide institutional investment managers who become subject to the requirement to file Form N-PX reports "sufficient time to implement the systems needed to record and report proxy votes." Therefore, the Commission has proposed to give a first time Form N-PX filer a "minimum of six months" before it is "required to begin recording its Section 14A Votes for purposes of reporting on Form N-PX."

We request a similar transition period for all institutional investment managers for the initial reporting of Section 14A Votes. Permitting all 13(f) Institutional Managers to disclose Section 14A Votes starting with meetings occurring on or after July 1, 2011 would provide these managers a period of approximately six months to implement systems changes to capture these votes. For some 13(f) Institutional Managers, proxy votes are processed manually and are not managed by outside proxy service providers, and new systems must be developed internally to capture and record Section 14A Votes electronically. Adding to this challenge is the fact that shareholder meetings are held throughout the year with many annual meetings occurring starting from January. These early annual meetings do not provide sufficient time for certain 13(f) Institutional Managers to have the systems ready for these meetings.<sup>7</sup> Indeed, many of the record dates with respect to these early meetings are occurring in November and December of 2010.

If, however, the Commission believes the Dodd-Frank Act requires disclosure of Section 14A votes for meetings after January 21, 2011 and that the Commission does not have discretion to provide a longer transition period, we respectfully request that the Commission provide formal guidance with respect to the first filing required under the rule. We request that the Commission issue guidance that it will not take enforcement action against 13(f) Institutional Managers that are unable to comply fully with the requirements despite diligent and good faith efforts to comply with the requirements of Rule 14Ad-1 and Form N-PX.

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The IAA supports the Commission's efforts to implement quickly the requirements of the Dodd-Frank Act for 13(f) Institutional Managers to provide their proxy voting record of Section 14A Votes. We believe that clarification and confirmation of the issues described above will be extremely useful to asset managers that must begin immediately the internal

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<sup>7</sup> We would be pleased to meet with the Commission staff to discuss in more detail the difficulty imposed on certain 13(f) Institutional Managers that have not previously filed Form N-PX or that do not currently capture all relevant information electronically for various reasons.

process of organizing the voting record information to make the required disclosures. We appreciate the opportunity to provide our views on these issues and would be pleased to provide any additional information. Please contact the undersigned or Karen L. Barr, General Counsel, at (202) 293-4222 with any questions regarding these matters.

Respectfully submitted,

/s/ Jennifer S. Choi

Jennifer S. Choi  
Associate General Counsel

cc: The Honorable Mary L. Schapiro, Chairman  
The Honorable Kathleen L. Casey  
The Honorable Elisse B. Walter  
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