

**UNBUNDLING OF PROXY PROPOSALS—INVESTMENT COMPANY
CHARTER AMENDMENTS**

The Division has received inquiries from registrants with respect to amendments to investment company charters in light of the requirements of Rule 14a-4 under the Securities Exchange Act of 1934. As a result, and in an effort to encourage consistent application of the rule, the staff is providing the following guidance.

Rule 14a-4(a)(3) under the Exchange Act requires that the form of proxy “identify clearly and impartially each separate matter to be acted upon, whether or not related to or conditioned on the approval of other matters” Further, Rule 14a-4(b)(1) requires that the form of proxy provide separate boxes for shareholders to choose between approval, disapproval or abstention “with respect to each separate matter referred to therein as intended to be acted upon” These rules, together commonly referred to as the Commission’s “unbundling” rule, are intended to provide a means for shareholders to communicate their views to the board of directors on each matter to be acted upon.¹ The Division staff’s long-time position has been that, in accordance with Rule 14a-4, a matter should be voted upon separately if the Investment Company Act of 1940, state law, or a fund’s organizational documents (charter, by-laws) require a matter under consideration to be submitted to shareholders.

Division staff has commented that proposed amendments to the charters of investment companies should be “unbundled,” providing separate votes for each proposed material amendment. While there is no bright-line test for determining materiality in the context of Rule 14a-4(a)(3), the staff believes that investment companies should consider whether a given matter substantively affects shareholder rights. Examples of proposed material amendments to the charters of investment companies that the staff has commented should be presented separately include, among other things, proposals seeking to: (1) amend voting rights from one vote per share to one vote per dollar of net asset value; (2) authorize a fund to involuntarily redeem small account balances; (3) authorize a fund to invest in other investment companies; (4) change supermajority voting requirements; (5) authorize the board to terminate a fund or merge with another



fund without a shareholder vote; and (6) authorize the board to make future amendments to the charter without a shareholder vote.² Notwithstanding the requirements of Rule 14a-4, the rule does not prohibit a soliciting party from conditioning effectiveness of any proposal on the adoption of one or more other proposals, if permitted by state law.³ Further, the staff has not objected to “bundling” proxy proposals that are ministerial in nature (e.g., proposals involving editorial or non-substantive changes to fund documents) or otherwise immaterial with a single material matter.⁴

Endnotes

- 1 Securities Exchange Act Release No. 31326 (Oct. 16, 1992) [57 Fed. Reg. 48276, 48287 (Oct. 22, 1992)].
- 2 See, e.g., Division of Corporation Finance: Manual of Publicly Available Telephone Interpretations, Fifth Supplement (Sept. 2004), available at: <http://www.sec.gov/interps/telephone/phonesupplement5.htm> (examples of affected charter or bylaw provisions that generally would be required to be set out as separate proposals in merger and acquisition transactions include corporate governance-related and control-related provisions).
- 3 Securities Exchange Act Release No. 31326, 57 Fed. Reg. at 48287.
- 4 See Division of Corporation Finance: Compliance and Disclosure Interpretations, Question 101.02 (Jan. 24, 2014), available at: <http://www.sec.gov/divisions/corpfin/guidance/14a-interps.htm>.

This *IM Guidance Update* summarizes the views of the Division of Investment Management regarding various requirements of the federal securities laws. Future changes in laws or regulations may supersede some of the discussion or issues raised herein. This *IM Guidance Update* is not a rule, regulation or statement of the Commission, and the Commission has neither approved nor disapproved of this *IM Guidance Update*.

The Investment Management Division works to:

- ▲ protect investors
- ▲ promote informed investment decisions and
- ▲ facilitate appropriate innovation in investment products and services

through regulating the asset management industry.

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