

# SEC Proxy Voting Disclosure Rules Aid Investors

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On November 2, 2022, the U.S. Securities and Exchange Commission (SEC) adopted rule 14Ad-1 under the Securities Exchange Act of 1934 (the Exchange Act) (Rule 14Ad-1) and amendments to Form N-PX under the Investment Company Act of 1940 (the Amendments), which will provide investors with greater insight into how mutual funds, ETFs, and other registered management investment companies (Funds) exercise their proxy voting power on behalf of investors.<sup>1</sup>

By way of background, in 2003, the SEC adopted Form N-PX, which requires Funds to report publicly their proxy voting records on an annual basis.<sup>2</sup> Transparency into Funds' proxy voting records are important to investors because Funds have the ability to influence the outcome of a wide variety of matters that public companies submit to a shareholder vote, such as matters related to governance, corporate actions, and shareholder proposals.<sup>3</sup> Indeed, as the SEC stated in 2003, "[i]nvestors in mutual funds have a fundamental right to know how the fund casts proxy votes on shareholders' behalf."<sup>4</sup>

Under current rules, however, it is challenging for investors to analyze Funds' Forms N-PX. For example, prior to the Amendments, Funds were not previously required to disclose votes in a consistent manner or in a format that is machine-readable because, although the form specifies the information that the Funds must provide, the form does not specify the format of the disclosure or how Funds present or organize the information.<sup>5</sup> As SEC Commissioner Jaime Lizárraga

explained, "[t]he current form . . . is outdated, overly lengthy, difficult to navigate, and of very limited use for comparisons across funds."<sup>6</sup>

## The Amendments and Rule 14Ad-1 Make Proxy Voting More Transparent and Useful to Investors

The Amendments will require Funds that are required to report their proxy votes annually to do so in a more structured, uniformed, and useful way. The Amendments will require a certain format for how Funds organize their reports, and will require Funds to use a structured data language to make the filings easier to examine.<sup>7</sup> For instance, the SEC will require Funds to file their reports using an XML structured data

language, making the data easier to analyze.<sup>8</sup> Similarly, Funds will have to follow a standardized order of disclosure requirements on Form N-PX and present a complete, separate voting record for each fund.<sup>9</sup> Furthermore, Funds will also be required to categorize their votes on Form N-PX.<sup>10</sup> Moreover, the Amendments will require Funds to disclose the number of shares that were voted or instructed to be voted, as well as the number of shares

loaned and not recalled, and thus, not voted.<sup>11</sup>

In addition, the SEC adopted Rule 14Ad-1 to require institutional investment managers to disclose how they voted on executive compensation (also referred to as "say-on-pay" votes), which the SEC explained will complete the implementation of section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>12</sup> That is, Rule 14Ad-1 will require



managers to report annually on Form N-PX each say-on-pay vote over which the manager exercised voting power.<sup>13</sup> Specifically, Rule 14Ad-1 will require managers to report say-on-pay votes when they use voting power to influence a voting decision with respect to a security.<sup>14</sup> Rule 14Ad-1 will also require additional disclosure to allow identification of a given manager's full say-on-pay voting record.<sup>15</sup>

### The Amendments' and Rule 14Ad-1's Positive Impact on Investors

The Amendments to Form N-PX and Rule 14Ad-1 will be a net positive for investors as these changes will make Funds' proxy votes easier to understand and more transparent.

Indeed, according to the SEC, the Amendments will make Funds' proxy voting records more usable and easier to analyze, improving investors' ability to monitor how their Funds vote and compare different Funds' voting records.<sup>16</sup> Similarly, because Funds will be required to categorize their votes, investors will be able to focus on the topics that investors find important.<sup>17</sup>

Furthermore, because the Amendments will require Funds to disclose the number of shares loaned but not recalled (and thus not voted by the Funds), the Amendments will improve the transparency of fund voting records and enable investors to more effectively monitor their funds' involvement in the governance activities of their investments, including providing context for understanding how securities lending activities affect voting practices.<sup>18</sup> As SEC Commissioner

Caroline A. Crenshaw explained, "[t]his closes what is a wide gap in the current disclosure regime, which can lead to an incomplete picture of proxy voting practices."<sup>19</sup>

Additionally, the transparency improvements created by these Amendments benefit investors because, as SEC Commissioner Crenshaw stated, these "amendments will further act as a deterrent to fund advisers who might be motivated to vote corporate proxies based on their own economic or personal interests, rather than those of their investors."<sup>20</sup>

In fact, as SEC Chairperson Gary Gensler himself explained, "these amendments . . . will allow

investors to better understand and analyze how their funds and managers are voting on shares held on their behalf," and these "amendments will provide investors with more detailed information about proxy votes, create more consistency around how funds describe their proxy votes, and structure Form N-PX in a machine-readable format."<sup>21</sup> Thus, as SEC Chair Gensler stated, "these enhancements to Form N-PX would make it more useful, and more usable, to investors."<sup>22</sup>

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## Endnotes

<sup>1</sup> *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, Release Nos. 33-11131; 34-96206, SEC (Nov. 2, 2022), (hereinafter “*Form N-PX Amendments Final Rule*”), at 5, <https://www.sec.gov/rules/final/2022/33-11131.pdf>.

<sup>2</sup> *Id.* at 6. Specifically, according to SEC Form N-PX, Form N-PX is to be used “by a registered management investment company . . . to file reports with the [SEC] . . . containing the registrant’s proxy voting record for the most recent twelve-month period ended June 30, pursuant to section 30 of the Investment Company Act of 1940 and rule 30b1-4 thereunder.” Form N-PX, SEC, <https://www.sec.gov/files/formn-px.pdf>. Form N-PX further notes that the SEC “may use the information provided on Form N-PX in its regulatory, disclosure review, inspection, and policymaking roles.” *Id.*

<sup>3</sup> *Fact Sheet: Amendments to Form N-PX and Say-on-Pay Vote Disclosure*, SEC, (hereinafter “*Form N-PX Amendments and Rule 14Ad-1 Fact Sheet*”), at 1, <https://www.sec.gov/files/33-11131-fact-sheet.pdf>. Notably, for context, the SEC estimates that, as of May 2022, over 12,000 funds with average total net assets of approximately \$35 trillion were required by law to report their proxy voting, which exemplifies the fact that funds thus play an important role in our capital markets, particularly for retail investors. SEC Commissioner Jaime Lizárraga, *Statement: Enhancing Fund Voting Reporting*, SEC (Nov. 2, 2022), (hereinafter, “*SEC Commissioner Lizárraga Statement*”) <https://www.sec.gov/news/statement/lizarraga-statement-amendments-form-npx-110222>.

<sup>4</sup> *Final Rule: Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies*, Release Nos. 33-8188, 34-47304, SEC (Apr. 14, 2003), <https://www.sec.gov/rules/final/33-8188.htm>.

<sup>5</sup> Press Release, *SEC Adopts Rules to Enhance Proxy Voting Disclosure by Registered Investment Funds and Require Disclosure of “Say-on-Pay” Votes for*

*Institutional Investment Managers*, SEC (Nov. 2, 2022), (hereinafter “*SEC Nov. 2, 2022 Press Release*”), <https://www.sec.gov/news/press-release/2022-198>; *N-PX Amendments Final Rule*, at 80.

<sup>6</sup> *SEC Commissioner Lizárraga Statement*.

<sup>7</sup> *SEC Nov. 2, 2022 Press Release*.

<sup>8</sup> *Form N-PX Amendments and Rule 14Ad-1 Fact Sheet*, at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Form N-PX Amendments and Rule 14Ad-1 Fact Sheet*, at 2.

<sup>11</sup> *SEC Nov. 2, 2022 Press Release*.

<sup>12</sup> *Form N-PX Amendments Final Rule*, at 78; *Form N-PX Amendments and Rule 14Ad-1 Fact Sheet*, at 2. Rule 14Ad-1 is applicable to each person that (1) is an “institutional investment manager” as defined in the Exchange Act; and (2) is required to file reports under section 13(f) of the Exchange Act. *Form N-PX Amendments Final Rule*, at 12.

<sup>13</sup> *Form N-PX Amendments and Rule 14Ad-1 Fact Sheet*, at 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* The Amendments and Rule 14Ad-1 also contain further changes to the current rules in addition to those outlined above. *See, generally, Form N-PX Amendments Final Rule*. Moreover, the SEC indicated that these new amendments and rules “will be effective for votes occurring on or after July 1, 2023, with the first filings subject to the amendments due in 2024.” *SEC Nov. 2, 2022 Press Release*.

<sup>16</sup> *SEC Nov. 2, 2022 Press Release*.

<sup>17</sup> *Form N-PX Amendments and Rule 14Ad-1 Fact Sheet*, at 2.

<sup>18</sup> *Form N-PX Amendments and Rule 14Ad-1 Fact Sheet*, at 2; *See also SEC Nov. 2, 2022 Press Release*.

<sup>19</sup> SEC Commissioner Caroline A Crenshaw, *Statement: Statement on Enhanced Reporting of Proxy Votes*, SEC (Nov. 2, 2022), <https://www.sec.gov/news/statement/crenshaw-statement-amendments-form-npx-110222>.

<sup>20</sup> *Id.*

<sup>21</sup> *See SEC Nov. 2, 2022 Press Release*.

<sup>22</sup> *Id.*