

December 14, 2021

Secretary, Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Submitted via <http://www.sec.gov/rules/submitcomments.htm>,
and rule-comments@sec.gov (File Number S7-11-21)

Re: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (File Number S7-11-21)

Dear Sir/Madam:

On behalf of the State of Utah, we respectfully submit the following comments in response to the Securities and Exchange Commission (“Commission”)’s proposed rule entitled Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (File Number S7-11-21) (“Proposed Rule”).¹ We focus our comments here on the proposed expansion of categories in Form N-PX proxy votes reporting.

The SEC **should not** adopt the expanded categories and sub-categories in Form N-PX. Increasing the reporting categories will provide little benefit to investors, but greatly add to the costs of reporting and corporate activism. The Form N-PX already provides considerable amounts of information. And while the Proposed Rule may improve access to that information by requiring structured data reporting, the unnecessary expansion of categories does nothing to serve the purported goals of increased transparency and access.

Further, the proposed categories are limited to those identified by SEC staff as frequently voted on in 2020.² This unexplained limitation signals that the expanded categories are being

¹ Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, 86 Fed. Reg. 57478 (proposed October 15, 2021) (to be codified at 17 C.F.R. pt. 232, 240, 249, 270, and 274).

² 86 Fed. Reg. 57478, 57486.

proposed to further political and social agendas, not to protect or benefit investors. We agree with the concerns stated by Commissioner Hester M. Peirce, that “[t]he real interest in this kind of detailed voting information seems to come from activists and the ever-expanding population of ‘stakeholders,’ for whom proxy voting seems to be the fund’s highest purpose.”³ We also agree with Commissioner Elad L. Roisman in his statement that “the Proposed N-PX Amendments go beyond mere ‘modernization’ and appear designed to alter the way funds fundamentally think about voting—in ways I do not believe will necessarily serve investors.”⁴ The SEC should not adopt the expanded Form N-PX reporting categories because the investors will bear the additional risks and costs but receive few additional benefits or protections.

BACKGROUND

Form N-PX currently requires registered management investment companies to report annually on each matter considered at any shareholder meeting to which the registrant was entitled to vote including:

- (d) The shareholder meeting date;
- (e) A brief identification of the matter voted on;
- (f) Whether the matter was proposed by the issuer or by a security holder;
- (g) Whether the registrant cast its vote on the matter;
- (h) How the registrant cast its vote (e.g., for or against proposal, or abstain; for or withhold regarding election of directors); and
- (i) Whether the registrant cast its vote for or against management.⁵

The Proposed Rule would expand and increase the annual proxy voting reporting requirements on Form N-PX. Among other changes, the Proposed Rule would require enhanced information from mutual funds, exchange traded funds (ETFs) and other funds regarding their proxy voting including that: (1) funds would be required to tie their proxy voting to specific categories; (2) funds would be required to organize reports and to use structured data language for easier search and analysis function; and (3) funds would also be required to disclose the number of shares voted, as well as the number of shares loaned and not recalled.⁶ The Proposed Rule would expand the “brief identification of the matter voted on”⁷ to include seventeen (17) categories and numerous sub-categories including:

- (L) Environment or climate (subcategories: greenhouse gas (GHG) emissions, transition planning or reporting, biodiversity or ecosystem risk, chemical

³ Commissioner Hester M. Peirce, Statement on Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, September 29, 2021, <https://www.sec.gov/news/public-statement/peirce-open-meeting-2021-09-29>.

⁴ Commissioner Elad L. Roisman, Statement on Proposed Changes to Asset Managers’ Proxy Voting Disclosures, September 29, 2021, <https://www.sec.gov/news/public-statement/roisman-open-meeting-2021-09-29>.

⁵ 17 CFR § 274.129, and <https://www.sec.gov/files/formn-px.pdf>.

⁶ 86 Fed. Reg. 57478, 57480.

⁷ *See id.*

footprint, renewable energy or energy efficiency, water issues, waste or pollution, deforestation or land use, say-on-climate, environmental justice, or other environment or climate matters (along with a brief description));

(M) Human rights or human capital/workforce (subcategories: workforce-related mandatory arbitration, supply chain exposure to human rights risks, outsourcing or offshoring, workplace sexual harassment, or other human rights or human capital/workforce matters (along with a brief description));

(N) Diversity, equity, and inclusion (subcategories: board diversity, pay gap, or other diversity, equity, and inclusion matters (along with a brief description));

(O) Political activities (subcategories: lobbying, political contributions, or other political activity matters (along with a brief description)); [and]

(P) Other social (subcategories: data privacy, responsible tax policies, charitable contributions, consumer protection, or other social matters (along with a brief description)).⁸

The Proposed Rule would also require proxy voting reporting on “securities on loan.”⁹

DISCUSSION

Increasing Reporting Categories Is Unnecessary

Expanding the Form N-PX reporting categories is not necessary. Substantial amounts of proxy voting information are already available through a simple search on the SEC’s “Search for Mutual Fund Proxy Voting Records” website.¹⁰ The stated purpose of the Proposed Rule is to increase transparency and make it easier and more efficient for investors to get information regarding proxy votes by the funds.¹¹ Because much of this information is already available to investors, the Proposed Rule’s requirement of structured data reporting satisfies these goals. As Commissioner Roisman stated, “forms filed electronically with the Commission in a structured format can allow investors to more easily analyze the content.”¹² We favor increasing the ease of analysis that will benefit investors. But increasing the reporting categories of proxy votes will provide no such benefit.

Moreover, investment managers already have a fiduciary duty to undertake proxy voting in the best interests of the investors. Both as part of their existing fiduciary duties and as required by current regulations, fund managers must “adopt and implement written policies and procedures that are reasonably designed to ensure that they vote [proxies] in the best interests of clients” and “describe their proxy voting policies and procedures to clients.”¹³ An investment manager must also inform investors “how they may obtain information from you about how you

⁸ 86 Fed. Reg. 57478, 57524.

⁹ *See id.* at 57523.

¹⁰ <https://www.sec.gov/edgar/searchedgar/n-px.htm>.

¹¹ SEC Proposes to Enhance Proxy Voting Disclosure by Investment Funds and Require Disclosure of “Say-on-Pay” Votes for Institutional Investment Managers, <https://www.sec.gov/news/press-release/2021-202>.

¹² Commissioner Elad L. Roisman, Statement on Proposed Changes to Asset Managers’ Proxy Voting Disclosures, September 29, 2021, <https://www.sec.gov/news/public-statement/roisman-open-meeting-2021-09-29>.

¹³ 17 CFR § 275.206(4)-6.

voted with respect to their securities.”¹⁴ The SEC notes that the enhanced proxy reporting requirements will “improv[e] investors’ ability to monitor how their funds vote.”¹⁵ But investors already can obtain and have access to detailed proxy voting information should they want to review it. The Commission does not need to add another layer of reporting when investors already have access to the information.

The New Reporting Categories Will Increase Activism, Administrative Costs, and Shareholders’ Risk of Loss

We are also concerned that the proposed new reporting sub-categories serve only activists of the political and social causes identified in those categories at the expense of shareholders. As an initial matter, limiting the proposed categories and subcategories—to issues allegedly frequently voted in 2020 is shortsighted, especially considering the lack of empirical support for environmental, social and governance (“ESG”) investment strategies. Indeed, SEC Commissioner Elad L. Roisman called the focus on these issues “myopic” and questioned the “staying power” of “ESG investment strategies.”¹⁶ While ESG investment strategies are becoming increasingly available, ESG investing is currently a term open to much interpretation with little long-term evidence on how these investment strategies perform over time or whether they are more than a marketing ploy. What seems certain about ESG investment strategies is that the management fees and expense ratios are much higher than those of traditional strategies. Despite these concerns, promulgating ESG issues into a reporting rule would “permanently memorializ[e]” their importance to investors.¹⁷

More important, the new categories merely fuel activism that will increase costs and risk of loss for shareholders. We echo the statement of SEC Commissioner Hester M. Peirce, who stated: “[t]he real interest in this kind of detailed voting information seems to come from activists and the ever-expanding population of ‘stakeholders,’ for whom proxy voting seems to be the fund’s highest purpose.”¹⁸ Activists will collect this reporting, not for the benefit of shareholders, but “to increase their leverage through intimidation and negative publicity.”¹⁹ The activists will *shape* proxy voting.²⁰ Given the current economic climate—when economic issues and rising inflation already threaten to undermine savings and decrease returns on investment—this seems an especially ill-timed moment to pressure proxy voting to serve the activists’ political and social agendas rather than the pecuniary interests of the fund.²¹ Worse, succumbing

¹⁴ *See id.*

¹⁵ SEC Proposes to Enhance Proxy Voting Disclosure by Investment Funds and Require Disclosure of “Say-on-Pay” Votes for Institutional Investment Managers. <https://www.sec.gov/news/press-release/2021-202> (Sept. 29, 2021).

¹⁶ Commissioner Elad L. Roisman, *Statement on Proposed Changes to Asset Managers’ Proxy Voting Disclosures*, September 29, 2021, <https://www.sec.gov/news/public-statement/roisman-open-meeting-2021-09-29>.

¹⁷ *See id.*

¹⁸ Commissioner Hester M. Peirce, *Statement on Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, September 29, 2021, <https://www.sec.gov/news/public-statement/peirce-open-meeting-2021-09-29>.

¹⁹ *See id.*

²⁰ *See id.*

²¹ Smialek, Jeanne, “Inflation Gut Punches Millennials: Pizza that weeks ago was 99 cents a slice is now \$1.50. That has Washington worried.” *New York Times* (Business, Dec. 10, 2021); Smialek, Jeanne and Casselman, Ben. “Inflation Gut Punches Millennials: Generation Y (and Z, too) is facing a steep rise in prices for the first time in memory.” *New York Times* (Business, Dec. 10, 2021).

to the activist pressures has wealth distributive effects to the detriment of the middle class. A significant percentage of mutual fund shareholders are middle-income Americans.²² Funds that vote in favor of often upper-class causes result in costs billed to middle- and working-class families.²³

The new categories will also lead to increased administrative costs for shareholders. If the proposed rule is motivated by the benefits to investors of enhanced information about proxy votes, those benefits should be weighed against the cost to investors of such reporting requirements. The SEC recognizes that management fees decrease the value of an investment portfolio over time.²⁴ Ongoing management fees include expenses such as compliance, record-keeping and shareholder services. Greater management fees result in higher expense ratios which eat away at the nominal rate of return for investors. The Proposed Rule imposes substantially burdensome reporting requirements on the funds by requiring the funds: (1) tie the description of voting matters to the issuer's form of proxy and categorize voting matters by type, as discussed, and (2) reflect proxy votes for which the portfolio securities are on loan where the fund could recall such securities in order to vote them. The subcategories include vague terms such as "human rights" or "diversity" which may require additional compliance officers to ensure correct categorization.

Those reporting costs will be passed along to the investors in the form of higher fees and lower returns on their investments. The latter part of the enhanced information required of funds might be particularly costly to investors if it encourages the fund to recall its securities early, in advance of the proxy vote, or discourages such lending altogether. But administrative costs will also result from the resources expended in response to the pressures to vote. Commissioner Peirce further stated:

A fund shareholder looking to earn a return so she can retire may not see much value in having the fund manager *devote a lot of resources to voting* and painstakingly categorizing the votes for publication. The fund manager, knowing that each vote will be made public, may feel pressured to expend more time considering the vote and figuring out how to catalog it than she would if the vote were not required to be made public and she were just focused on doing what was best for the fund.²⁵

Moreover, these new reporting requirements and voting pressures may conflict with a fund's fiduciary duties to their investors.

²² Andrew Lanoie, *The Middle-Class Mindset Of The High-Income Earners And The Block To Invest In Real Estate*, Forbes (Sept. 14, 2021), <https://www.forbes.com/sites/forbesrealestatecouncil/2021/09/14/the-middle-class-mindset-of-the-high-income-earners-and-the-block-to-invest-in-real-estate/?sh=3a04e062592e>.

²³ Andy Puzder and Diane Black, *Who Really Pays for ESG Investing?*, Wall Street Journal (May 12, 2021).

²⁴ SEC Office of Investor Education and Advocacy "How Fees and Expenses Affect Your Investment Portfolio". *SEC Investor Bulletin* SEC Pub. No. 164 (2/14) (https://www.sec.gov/investor/alerts/ib_fees_expenses.pdf).

²⁵ Commissioner Hester M. Peirce, Statement on Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, September 29, 2021, <https://www.sec.gov/news/public-statement/peirce-open-meeting-2021-09-29> (emphasis added).

There will also be costs associated with securities on loan and whether those are recalled for voting purposes. Commissioner Peirce stated:

[B]ecause of the way the proposal suggests leaving securities out on loan is an abdication of voting responsibilities, a fund manager might conclude she has to recall lent securities to vote them, when the extra securities lending revenue might have been worth more to the fund than exercising the vote. An investor is motivated by a desire to see a positive return on her fund investment, and as the nation’s capital markets regulator, her interests should be our concern, not the interests of those seeking to use her fund to further their own interests.²⁶

Fund managers should be making decisions—including leaving securities out on loan—based on maximizing wealth. “Funds can earn billions per year from lending out the securities in their portfolios, which can translate into *increased returns for fund investors*.”²⁷ External pressures to support political and social causes that force funds to recall lent securities in order to vote undermines the fund’s primary responsibility of wealth maximization and will deprive investors of maximum return on their investments.

CONCLUSION

The new categories and sub-categories of N-PX reporting in the Proposed Rule are shortsighted and vague. The increased reporting would increase costs to investors while also increasing activism, all without any clear benefit to investors. The Commission must ensure that the Proposed Rule furthers a fund’s fiduciary duty and does not favor political or social causes or proxy voting advisors. As Commissioner Roisman stated, “[t]hese changes are not required by any statute or other mandate but are within the discretion of this agency.”²⁸ It would be an abuse of the Commission’s discretion to adopt the proposed categories and subcategories to be reported on Form N-PX. Indeed, the Proposed Rule directly *contravenes* the Commission’s statutory authority because rather than *protecting* investors, the rule would harm shareholders with increased costs and risk.

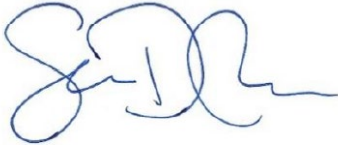
²⁶ Commissioner Hester M. Peirce, Statement on Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, September 29, 2021, <https://www.sec.gov/news/public-statement/peirce-open-meeting-2021-09-29>.

²⁷ Commissioner Elad L. Roisman, Statement on Proposed Changes to Asset Managers’ Proxy Voting Disclosures, September 29, 2021, <https://www.sec.gov/news/public-statement/roisman-open-meeting-2021-09-29>.

²⁸ *See id.*

Thank you for the opportunity to provide comments. If you have any questions, please contact the Office of the Utah Attorney General or the Utah Office of State Treasurer.

Respectfully submitted,



Sean D. Reyes
Attorney General of Utah



Marlo M. Oaks, CFA, CAIA
Treasurer, State of Utah



John Dougall
Utah State Auditor