



## Consumer Federation of America

December 14, 2021

VIA E-MAIL: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers**

Dear Secretary Countryman:

I am writing on behalf of the Consumer Federation of America (CFA)<sup>1</sup> in response to the Commission's proposal to amend Form N-PX under the Investment Company Act of 1940 ("1940 Act"). As proposed, these amendments would enhance the information that investors receive from mutual funds, exchange-traded funds ("ETFs"), and certain other funds regarding their proxy voting record.<sup>2</sup> This proposal would also amend the Securities Exchange Act of 1934 ("1934 Act") to require additional disclosures by "13F filers"<sup>3</sup> to include "say-on-pay" votes.

CFA has long championed efforts to enhance disclosures to shareholders by the fund managers and institutional investors that manage their investments,<sup>4</sup> and therefore strongly encourages the Commission to advance these amendments.

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<sup>1</sup> Consumer Federation of America is an association of more than 250 national, state, and local pro-consumer organizations founded in 1968 to advance the consumer interest through research, advocacy, and education.

<sup>2</sup> Proposed Rule, *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, 86 FR 57478 (Oct. 15, 2021).

<sup>3</sup> See Adam Hayes, *What is SEC Form 13F?*, Investopedia, <https://www.investopedia.com/terms/f/form-13f.asp>, ("Form 13F is a quarterly report that is required to be filed by all institutional investment managers with at least \$100 million in assets under management. It discloses their equity holdings and can provide insights into what the smart money is doing in the market.")

<sup>4</sup> See, e.g., Consumer Federation of America, *Comment Letter Re: Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements*, (Jan. 4, 2021), <https://www.sec.gov/comments/s7-09-20/s70920-8204376-227513.pdf>, and *Comment Letter Re: Mutual Fund Disclosure Modernization* (Dec. 15, 2020), <https://www.sec.gov/comments/s7-09-20/s70920-8144542-226675.pdf>.

## 1. Amendments to Form N-PX

On Sept. 29, 2021, the Securities and Exchange Commission proposed Rule 14Ad-1 and amendments to Form N-PX under the 1940 Act (“proposed amendments” or “proposed rules”). The proposed rules would elicit more comprehensive and easily understandable information about the proxy votes cast by mutual funds, exchange traded funds and certain other investment companies registered under the 1940 Act that currently file annual reports on Form N-PX. Because the proposed rules specifically require disclosure of proxy votes organized by category and using the issuers’ language to describe them, these enhancements will allow investors to more easily understand how their shares are being voted, how their shares are being decidedly not voted, and how the votes compare with other funds across the passive investment industry. Collectively, these changes will not only enhance retail investors’ ability to make informed decisions about their passive investments, but they will also assist the Commission in evaluating the effectiveness of its own rules.

## 2. Amended Requirements for 13F Filers

The proposed rules would require all fund managers that are 13F filers to annually disclose their proxy votes on executive compensation matters, or “say-on-pay” votes, on Form N-PX, regardless of whether they manage a registered investment company. If adopted, this proposal would implement Section 951 of the Dodd-Frank Act, which requires institutional investment managers subject to the reporting requirements of section 13(f) of the 1934 Act to disclose their say-on-pay votes annually.<sup>5</sup> The proposed rules would implement this long-standing mandate by requiring 13F filers to report such votes each year on Form N-PX.

## 3. Why this Rule Proposal is Needed

Earlier this year, Commissioner Allison Herren Lee gave a speech that highlighted the dramatic increase in passive investments that has occurred over the last several decades, and more recently, how investor demands for the consideration of environmental, social, and governance (“ESG”) performance of their investments has skyrocketed.<sup>6</sup> The Commissioner remarked that these trends have made clear why Form N-PX is due for changes, stating that disclosures in their current form are “unwieldy, difficult to understand, and difficult to compare across fund complexes.”<sup>7</sup> A similar assessment was expressed during the Commission’s meeting on September 29, 2021, by Sarah ten Seithoff, Acting Director of the Division of Investment Management, who observed that currently, “Form N-PX filings sometimes can be more than a thousand pages long[,] . . . votes on the same matter might be reported inconsistently from fund to fund[,] . . . many of the descriptions of votes can be vague[,] . . . [and] they’re not currently

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<sup>5</sup> The SEC proposed rules to implement this directive in 2010, but the proposal was never finalized. *See Reporting on Proxy Votes on Executive Compensation and Other Matters*, Release No. 34-63123 (Oct. 18, 2010).

<sup>6</sup> *See* SEC Commissioner Allison Herren Lee, *Every Vote Counts: The Importance of Fund Voting and Disclosure*, (March 17, 2021), [https://www.sec.gov/news/speech/lee-every-vote-counts#\\_ftnref4](https://www.sec.gov/news/speech/lee-every-vote-counts#_ftnref4).

<sup>7</sup> *Id.*

reported in a machine-readable format, so an investor can't even download the information to a spreadsheet, making the data harder to analyze.”<sup>8</sup>

In addition, and as alluded to by Commissioner Lee in the above-referenced speech, there is a critical nexus between this rule proposal and the broader landscape of ESG considerations in investment decision making. This nexus is important for several reasons, but we will focus here on two of them. The first is that without this type of improvement in the way that a fund's proxy votes are disclosed to a fund's investors, many of those investors will have difficulty understanding how their shares are being voted, which means that such investors will also be unable to easily discern whether their votes are being used to support and/or encourage the ESG considerations that may (or may not) be important to them. Similarly, in the absence of the proposed amendments, such investors may not be able to easily discern how an investment fund's ESG considerations compare to other available investment funds on the market, thereby limiting investors' ability to choose (or not choose) a fund using ESG considerations as part of that decision.

Our second focal point is on the larger context of ESG-related rulemaking that is being undertaken by the Commission. In addition to the proposed rules, the Commission has requested public input on potential mandatory climate and ESG-related disclosures for regulated issuers with an expected rule proposal forthcoming,<sup>9</sup> begun exploring similar regulatory options for disclosures by Funds and Advisers,<sup>10</sup> and has expressed interest in possible ESG-related amendments to Rule 35d-1 under the 1940 Act (i.e., the Names Rule).<sup>11</sup>

CFA has previously submitted comments to the SEC that expressed our strongly held view that climate change-related data, the financial risks associated with this data, and the methodologies and assumptions used to obtain and present this data are material to the decision-making processes of reasonable investors.<sup>12</sup> Because these factors can be critical to investment decision making, the related information should be disclosed in an accessible and usable form to the investors that demand and require it. And each of the regulatory items discussed above represent a component of the ESG puzzle that the SEC must fit together if it is to effectively facilitate the information needs of investors and issuers.

Accordingly, the proposed rules would effectuate and enhance a critical point of connection between investors and the funds in which they invest, thereby ensuring investors have meaningful access to necessary information about the proxy votes that are being cast on their behalf. And because the above-mentioned regulatory initiatives are inter-reliant, without the

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<sup>8</sup> Press Release, *SEC Proposes to Enhance Proxy Voting Disclosure by Investment Funds and Require Disclosure of “Say-on-Pay” Votes for Institutional Investment Managers* (Sept. 29, 2021), <https://www.sec.gov/news/press-release/2021-202>.

<sup>9</sup> Acting SEC Chair Allison Herren Lee, *Public Input Welcomed on Climate Change Disclosures* (Mar. 15, 2021), <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.

<sup>10</sup> See, e.g., SEC Asset Management Advisory Committee, *Discussion Draft, Recommendations for ESG* (July 7, 2021), <https://www.sec.gov/files/amac-recommendations-esg-subcommittee-070721.pdf>.

<sup>11</sup> SEC Chair Gary Gensler, *Prepared Remarks Before the Asset Management Advisory Committee* (July 7, 2021), <https://www.sec.gov/news/public-statement/gensler-amac-2021-07-07>.

<sup>12</sup> See Consumer Federation of America, *Comment Letter in re: Public Input on Climate Change Disclosures*, at 26 (June 14, 2021), <https://consumerfed.org/wp-content/uploads/2021/06/SEC-Climate-Change-Disclosure-Letter.pdf>.

adoption of the proposed amendments, the efficacy of some of the Commission's other ESG-related enhancements will likely suffer.

#### **4. Consider Additional Regulatory Actions for 13F Filers**

CFA has a long track record of supporting the Commission's efforts to enhance the information and disclosures that are provided to investors, whether they are invested through mutual funds or some other investment vehicle. As such, and because the proposed enhancements will provide better information to investors regarding the votes managed by certain investment funds, we would also urge the Commission to consider whether the full scope of enhanced disclosure requirements contemplated by this proposal should also be applied to institutional investment managers (i.e., fully extended to 13F filers), in addition to the enhanced say-on-pay requirements of the current proposal. While CFA has not publicly expressed a position on that question, we would welcome additional efforts by the Commission to generate additional data and stakeholder feedback.

#### **5. Conclusion**

The proposed amendments to the 1940 Act and the 1934 Act will provide investors with better information and better tools to assess whether their interests are being voted by asset managers, thereby allowing better-informed decision making as it relates to their choice of investments and investment managers. The proposed rules will also facilitate the Commission's broader effort to meet the demands of investors relating to ESG considerations and performance. Without the proposed amendments, many investors will remain unable to fully understand or assess their own impacts on the market.

In sum, investors that are equipped with enhanced disclosures will be able to better assess and manage their influence on the corporate governance practices and external impacts of the companies they own. Relatedly, regulators will also be able to better identify and evaluate additional avenues to enhance the information provided to these investors. Accordingly, it is of critical importance that the SEC move forward with its proposal.

Respectfully submitted,



Dylan Bruce  
Financial Services Counsel