Public Statement

# Statement on Proposed Changes to Asset Managers' Proxy Voting Disclosures

**Commissioner Elad L. Roisman**

**Sept. 29, 2021**

Thank you, Chair Gensler, and thank you to the staff in the Division of Investment Management (the "Division") for your hard work on the recommendation we are considering today, to propose amendments to disclosures that asset managers make with regard to their proxy voting.[1] As no recommendation gets to the Commission without scrutiny from our Division of Economic and Risk Analysis and Office of General Counsel, I would like to thank the staff in these groups for their work as well. Finally, thank you to everyone who engaged with my team and me on the matters we are considering today.

Before us is a proposal to amend our rules in two ways. First, the proposed amendments would effectuate a requirement under Section 951 of the Dodd-Frank Act that we expand reporting of say-on-pay votes. I have no objection to these proposed changes. I have before expressed my strong belief that when Congress requires this agency to act, we must act.[2] This part of the proposal is a reasonable means of following Congress's instructions. As any proposal, I am sure this one will benefit from being published for notice and comment, and I look forward to hearing how commenters believe we can improve it.

The second part of the recommended proposal would amend the form and substance of Form N-PX to both alter and add to the information that investment companies must disclose regarding their proxy voting (the "Proposed N-PX Amendments"). These changes are not required by any statute or other mandate, but are within the discretion of this agency. I agree with several aspects of the Proposed N-PX Amendments. Primarily, I support the premise: it is true that funds have come to own a huge percentage of U.S. corporate equities and can influence the outcome of a variety of matters that companies submit to a shareholder vote.[3] For this reason, over the past three years, the Commission undertook several steps to ensure that investment advisers, including those managing funds, approach voting seriously and in the best interests of their clients.[4]

I also agree with the components of this proposal aimed at making Forms N-PX more useful for investors. When I have reviewed Forms N-PX that have been filed with us, I have found it frustrating to see funds list their votes on agenda items opaquely labeled as "Miscellaneous" and have to look up the relevant issuer's proxy statement in order to understand what matters the funds were considering. Additionally, I can see how having forms filed electronically with the Commission in a structured format can allow investors to more easily analyze the content. So, to the extent the Proposed N-PX Amendments aim to update the form in these ways, I am supportive. However, 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. For this reason, I support this proposal as far as it is just that: a proposal. Nevertheless, I believe it is important to explain my concerns which which hopefully commenters can respond to and allay before the Commission adopts final rules.

The Commission has clearly stated that advisers and their clients can shape their relationship however they choose, including with respect to how and when advisers vote client shares.[5] This guidance should allow for a wide variety of fund strategies—including those that prioritize voting, for investors who believe influencing corporate governance is important to their investments, and those that prioritize other ways of realizing value. Maximizing revenue for a fund through securities lending is one such value maximization strategy. Funds can earn billions per year from lending out the securities in their portfolios, which can translate into *increased returns for fund investors*.[6] I wish there was greater discussion of this in the proposal and hope commenters provide us with data on this point. This Commission is not a merit regulator, and we should not try to tip the scales, via disclosure or otherwise, toward or against any particular strategy.

Yet this amended form would require funds to report how many shares of stock in a company the fund owns but decided not to recall for voting. At best, this disclosure seems ill-designed to communicate to investors the balancing that funds go through when considering how to maximize value for fund investors. When a fund manager is faced with the decision of whether or not to recall shares in a company in order to vote in the meeting, the manager considers where the fund can get the most bang for its buck—a calculus that can involve, for example, weighing how significant that company's shares are to the overall portfolio, how likely it is that the fund will influence the outcome of the vote, and what issues might be on the company's agenda in the first place.

None of these considerations are reflected in the proposed new disclosure, and investors will be left to view only *part of the outcome* of this balancing act: the unvoted shares. Where's the metric of how much revenue the fund generated through those non-recalled shares? How about the fund's estimate of how much return it *sacrificed by deciding to recall other shares*? Frankly, at this point in time, I have not seen evidence suggesting that reporting any of these three numbers is material to investors—but I think that reporting only this metric gives a distorted view of how managers make decisions and potentially implies that voting shares *should be* a fund's priority rather than lending out those shares for a return. This implication undermines our prior guidance, and I believe could cut off a source of significant value for investors in funds. I hope that commenters will provide feedback on this aspect of the proposal, including whether the proposed disclosure is useful for investors and whether it will introduce new incentives for fund managers. I am also interested in whether commenters think we could further tailor these reporting requirements, for example by not requiring managers that have a stated and disclosed practice of not voting shares to file Form N-PX. Alternatively, should certain information on this form only be required if funds have disclosed to investors that active corporate governance is a priority for the fund?

Another serious concern I have with the Proposed Form N-PX Amendments relates to the proposed categorization framework, which funds will have to follow when listing the matters on which they voted. I can understand why investors might want funds to present their votes in comparable categories. But the process by which we have devised this framework does not appear to be based on rigorous analysis. Rather than grounding it on a review of proxy voting matters from several prior years, we focused only on the most recent proxy season for which information was available—2020—and started sorting from there. Moreover, we did not tabulate even these 2020 votes into our proposed categories, and it remains a mystery to me whether some of these categories and subcategories include matters voted upon at hundreds of companies' meetings or merely one or two. This is hardly a recipe for longevity, which, given that we are unlikely to revisit a rulemaking for several years, causes me considerable concern. By freezing in place categories that reflect issues *last year's* shareholders care about, we risk relegating future shareholders' interests to an "Other" category that likely will be as useful to investors as the line items appearing as "Miscellaneous" on today's forms.

The proposal's myopic focus on the year 2020 has substantive policy implications as well. The most obvious example is our proposed "ESG" categories and subcategories. In the year 2020, ESG investment strategies proliferated for myriad reasons.[7] Whether they have staying power in their current form is yet to be seen, but by permanently memorializing their interests into our reporting of votes, we seem to be underscoring the importance of these issues to all investors for years to come.

As an aside, I think it is interesting that the proposed ESG categories and sub-categories stand out from the others on our proposed list in terms of their number and ambiguity. Several of the subcategories in the multiple

"environmental" and "social" categories are at once incredibly specific and also potentially overlapping. I suspect a large part of the comment file will include feedback from funds asking for clarity on what we mean by terms like "environmental justice" and how filers should delineate between that and other terms like "water issues" which can involve the same concerns. Yet, this ambiguity is typical of ESG issues more broadly—the terms mean different things to different people, who have different objectives and interests in obtaining the information. Unlike other categories on our proposed list such as "board of directors," "audit-related," or "capital structure" matters, which have less ambiguity in their meaning for public companies, environmental and social issues are largely newer focus areas in terms of shareholder voting for public companies and funds. I believe the difficulty we apparently had even delineating what each ESG category and subcategory covers in our proposal reflects how hard it is to come up with a structure for reporting of ESG information that is comparable across companies—let alone *material* to investors.

Despite my strong reservations, I have decided to vote in favor of issuing this proposal for notice and comment. My vote today in no way reflects how I would vote on a recommendation to adopt these rules. But, I respect the work of our Division staff and believe that public engagement on these topics will be helpful for the Commission. I do think it is unfortunate that we could not reach a unanimous vote on this matter—especially considering that we were only a few words and a question mark away from doing so. In addition to the requests for comment in the proposal, I am interested in commenters' views on the question my colleague Commissioner Peirce has asked in her statement[8] and believe the Commission would benefit from these viewpoints as well.

Thank you.

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[1] Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Rel. No. 34-93169 (Sept. 29, 2021), https://www.sec.gov/rules/proposed/2021/34-93169.pdf (hereinafter, the "Proposed Amendments").

[2] *See*, *e.g.*, Commissioner Elad L. Roisman, "Statement at Open Meeting on Disclosure of Payments by Resource Extraction Issuers" (Dec. 26, 2020), >https://www.sec.gov/news/public-statement/roisman-resource-extraction-2020-12-16 ("[] I will vote in favor of adopting this rule. My vote does not reflect any enthusiasm I have for the policy mandate we received from Congress to write such rules in the first place. Rather, I will support this rule because I believe we have a duty to implement the mandates handed to us by Congress, and because I believe this is a reasonable implementation of the mandate set forth in Section 13(q).)").

[3] *See* the Proposed Amendments, *supra* note 1, at 9.

[4] *See* Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Investment Advisers Act Release No. 5325 (Aug. 21, 2019), >https://www.sec.gov/rules/interp/2019/ia-5325.pdf (hereinafter "Adviser Proxy Voting Guidance"); Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Release No. IA-5547 (July 22, 2020), >https://www.sec.gov/rules/policy/2020/ia-5547.pdf. *See also* Exemptions from the Proxy Rules for Proxy Voting Advice, Rel. No. 34-89372 (July 22, 2020), >https://www.sec.gov/rules/final/2020/34-89372.pdf (addressing obligations of those businesses that provide proxy voting advice, including to investment advisers).

[5] *See* Adviser Proxy Voting Guidance, *supra* note 4.

[6] *See* Proposed Amendments, at note 237.

[7] *See* Commissioner Elad L. Roisman, "Can the ESC Make ESG Rules that are Sustainable?" (June 22, 2021), >https://www.sec.gov/news/speech/can-the-sec-make-esg-rules-that-are-sustainable#_ftn19 (referencing how legislative bodies in other countries have taken steps to intentionally motivate asset managers or businesses operating there to pursue explicitly societal goals, including environmental sustainability).

[8] *See* 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” (Sept. 29, 2021), https://www.sec.gov/news/public-statement/peirce-open-meeting-2021-09-29.