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December 14, 2021

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (File No. S7-11-21)*

Dear Ms. Countryman:

The Investment Company Institute[1] supports the Securities and Exchange Commission's (SEC or "Commission") goals to modernize Form N-PX and make information reported on the form more usable.[2] We are concerned, however, that several elements of the Proposal, including the proposed requirements to categorize proxy matters according to a detailed taxonomy, report the number of shares loaned but not recalled, and describe ballot matters using language in the issuer's form of proxy, would not accomplish the SEC's goals and would raise significant operational challenges for registered investment companies ("funds") and institutional investment managers ("managers").

We provide below recommendations to address these concerns. We also urge the SEC to provide sufficient time for funds and managers to implement any final changes to Form N-PX, by

[1] The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$32.7 trillion in the United States, serving more than 100 million US shareholders, and US$9.9 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

[2] *See Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, 86 Fed. Reg. 57478 (Oct. 15, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-10-15/pdf/2021-21549.pdf ("Proposal" or "Proposing Release").

The Proposal replaces and supersedes the SEC's 2010 proposal that would have amended Form N-PX reporting requirements for funds and required managers to report their proxy votes on executive compensation, or "say on pay" matters, as required by Section 951 of the Dodd-Frank Act. *See Reporting of Proxy Votes on Executive Compensation and Other Matters*, 75 Fed. Reg. 66622 (Oct. 28, 2010), *available at* https://www.sec.gov/rules/proposed/2010/34-63123fr.pdf. ICI's comment letter on the 2010 proposal is available at https://www.ici.org/system/files/attachments/pdf/24721.pdf ("ICI 2010 Comment Letter"). We appreciate that the SEC has reflected, in the Proposal, concerns that ICI and others raised regarding the operational feasibility of certain aspects of the 2010 proposal.

requiring that the first reports on amended Form N-PX be filed no sooner than the August 31 that is a minimum of 14 months from the rule's effective date. This will provide funds and managers with a full one-year reporting period under the revised requirements before they need to file the amended form. In addition, we encourage the Commission, as it considers our recommendations, to fairly evaluate and balance the benefits to funds, managers, investors, and other market participants, against the costs and burdens posed by any final requirements.

I. Executive Summary

ICI has concerns about several aspects of the Proposal.

First, we recommend, in Section II.A., that the Commission replace its 17 proposed categories and multiple subcategories for proxy matters with a smaller number of higher-level categories that are more likely to be "evergreen" and not require regular updating by the Commission. Instead of requiring subcategories, we recommend that the SEC provide, in the adopting release, non-exclusive examples of matters that would fall within each category. We note that there is less need for granular categories, given that the Proposal would require reporting persons to data tag the information reported on Form N-PX.

Accordingly, we suggest the following categories, which largely correspond to those the SEC has proposed, with some combined:

- Director elections
- Audit-related
- Compensation-related
    - Section 14A say-on pay votes
    - Other compensation-related
- Capital structure
- Extraordinary transactions
- Corporate governance
- Social/Environmental
- Investment company matters
- Miscellaneous

Second, we recommend, in Section II.B., that the SEC *not* require reporting of shares loaned and not recalled. Instead, to provide more relevant information about funds' and managers' (together, "reporting persons") securities lending and share recall practices, the SEC should require reporting persons that engage in securities lending to describe, on Form N-PX, their policy regarding recalling lent securities for purposes of proxy voting (or reference their description of the policy, if the description is already disclosed in another SEC-filed document). This approach would allow reporting persons to provide appropriate context for their share recall practices and

would be consistent with global requirements and standards, such as the EU Shareholder Rights Directive (SRD 2) and the UK Stewardship Code.

Third, as discussed in Section II.C., the SEC's proposed requirement that reporting persons describe ballot matters using the same language, and present them in the same order, as in the issuer's form of proxy raises operational challenges and may increase costs for funds and their shareholders. To address these challenges, we recommend that the SEC require corporate issuers to data tag the description of each ballot matter in their proxy statements so that reporting persons can readily "pull" this data from the issuer's proxy statement. We recommend that the SEC *not* require that ballot matters be presented in the same order as in the issuer's form of proxy. Instead, we believe the SEC's concerns about comparability can be addressed through data tagging, particularly if the SEC adopts our recommendation to require corporate issuers to data tag the description of each ballot matter in the proxy statement.

Fourth, as discussed in Section III, we recommend that the SEC provide a longer time period for reporting persons to implement any final rule. The SEC should provide a minimum of one full reporting period for funds and managers to implement the extensive changes that the SEC proposes. To achieve this, we recommend that the SEC require that the first reports on amended Form N-PX be filed by the August 31 that is a minimum of 14 months from the rule's effective date. Reporting persons also will need additional time to incorporate the new XML taxonomy into their systems and make test filings.

ICI supports many aspects of the Proposal including:

- Completing the Dodd-Frank Act required "say on pay" rulemaking;
- Requiring reporting persons to prepare reports on Form N-PX using an XML taxonomy (*i.e.*, data tagging);
- Requiring that funds make their proxy voting records available on or through the fund's website;
- Providing for optional joint reporting requirements; and
- Retaining the current time frame for reporting proxy votes on Form N-PX.

As the SEC works to finalize its proposed amendments, we urge the Commission to analyze more closely the costs and burdens of the proposed amendments for smaller funds and managers. The Commission's economic analysis of the Proposal does not address key costs and burdens of the proposed amendments for smaller firms. For example, many smaller funds do not currently use a vendor to prepare Form N-PX but anticipate that they may hire one for this function if the SEC adopts the amendments as proposed. Finally, we encourage the Commission to address several proxy voting reform matters that remain critical for funds, including reform of the processing fee framework, reform of the OBO/NOBO system, and end-to-end vote confirmation.

II. Proposed Amendments to Reporting Obligations

A. Categorization of Proxy Votes

Under the Proposal, reporting persons would be required to categorize their proxy votes according to a proposed list of 17 categories and 89 subcategories intended to identify the subject matter of each of the reported ballot items. The SEC based the proposed categories on a review of proxy matters on which funds voted in 2020, including say on pay votes.

Importantly, this aspect of the Proposal would not accomplish the SEC's objective "to allow investors to compare how different managers or funds voted on specific types of matters."[3] Rather, because of the granularity and potential overlap among the SEC's proposed categories, reporting persons likely would classify the same proxy matter differently, resulting in confusion and a lack of comparability. For example, how should a fund classify a shareholder proposal relating to an issuer's alleged gender pay gap? Such a proposal reasonably could fit within one or a combination of the "compensation," "corporate governance," or "diversity, equity, and inclusion" categories. This lack of consistency would not promote comparability for investors and others.

It is difficult for any classification system for proxy matters to avoid potential overlap among categories and nearly impossible to create at a single point in time a classification system that will remain "evergreen" for all ballot matters. Certain proxy matters, such as election of directors and ratification of auditors, are consistent year-over-year, but others, such as matters that are the subject of shareholder proposals, vary significantly over time. Periodic revisions or updates therefore likely will be necessary over time to reflect new types of ballot matters. Moreover, maintaining the currentness of a ballot classification system captured in rule text would be time consuming for the Commission, as changes would likely require amending Form N-PX. It is likely that by the time the Commission adopts any amendments, the "new" rule risks being immediately out-of-date. As a practical matter, even the most carefully constructed ballot classification system will require reporting persons to make subjective determinations and is unlikely to result in consistent categorization of the same ballot matters.[4]

The SEC should address these concerns. First, the Commission should replace its proposed categories and subcategories with a smaller number of higher-level categories that are more likely to be "evergreen" and not require regular updating by the Commission. In most cases,

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[3] Proposing Release at 57487.

[4] As Commissioner Roisman observed, "[b]y 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." Commissioner Elad L. Roisman, *Statement on Proposed Changes to Asset Managers' Proxy Voting Disclosures* (Sept. 29, 2021), *available at* https://www.sec.gov/news/public-statement/roisman-open-meeting-2021-09-29 ("Roisman Statement").

instead of requiring subcategories, we recommend that the SEC provide, in the adopting release, non-exclusive examples.[5] We believe the SEC could achieve greater clarity and consistency by requiring ballot matters to be identified based on the following categories, which largely correspond to those the SEC has proposed, with some combined:[6]

- Director elections
- Audit-related (*e.g.*, auditor ratification, auditor rotation)
- Compensation-related
    - Section 14A say-on pay votes (*e.g.*, Section 14A executive compensation, Section 14A executive compensation vote frequency, Section 14A extraordinary transaction executive compensation)
    - Other compensation-related (*e.g.*, board compensation, executive compensation (other than Section 14A say-on-pay), board or executive anti-hedging, board or executive anti-pledging, compensation clawback, 10b5-1 plans)
- Capital structure (*e.g.*, stock split, reverse stock split, dividend, buyback, tracking stock, adjustment to par value, authorization of additional stock, matters relating to security issuance such as equity, debt, convertible, warrants, units, and rights)
- Extraordinary transactions (*e.g.*, merger, asset sale, liquidation, buyout, joint venture, going private, spinoff, delisting)
- Corporate governance (*e.g.*, articles of incorporation or bylaws, board committees, term limits, committees, size of board, codes of ethics, approval to adjourn, acceptance of minutes; matters relating to shareholder rights and defenses such as adoption or modification of a shareholder rights plan, control share acquisition provisions, fair price provisions, board classification, cumulative voting)
- Social/Environmental (*e.g.*, greenhouse gas (GHG), emissions, transition planning or reporting, biodiversity or ecosystem risk, chemical footprint, renewable energy or energy efficiency, water issues, waste or pollution, deforestation or land use, say-on-climate, environmental justice; human rights or human capital, such as workforce related mandatory arbitration, supply chain exposure to human rights risks, outsourcing or offshoring, workplace sexual harassment; diversity, equity, and inclusion matters, such as board diversity, pay gap; political activities, such as lobbying, political contributions)
- Investment company matters (*e.g.*, change to investment management agreement, new investment management agreement, assignment of investment management agreement, business development company approval of restricted securities, closed-end investment company issuance of shares below net asset value, business development company asset coverage ratio change)

[5] The SEC or its staff could supplement these examples over time, as necessary, by providing guidance regarding the categorization of future proxy ballot matters.

[6] In some cases, we have combined categories to simplify and clarify the categorization process. We note that the categories the SEC has proposed largely reflect issues presented in US issuers' proxy statements. Foreign ballot matters may not fit as neatly into these categories.

- Miscellaneous

We believe that the need for granular categories is less necessary given that the Proposal would require reporting persons to data tag the information reported on Form N-PX. This data tagging would facilitate the ability of investors and other market participants to easily search for ballot matters using key words or other search terms.

Second, in finalizing any categorization system, the SEC should consider the feasibility of the system and any operational challenges it may raise for proxy voting advisory firms (PVAFs) and other vendors that are likely to provide this function for reporting persons, along with the resulting costs to reporting persons. Currently, many funds use PVAFs or other vendors to prepare Form N-PX filings. We understand from our members that these firms are better equipped than funds or managers to categorize ballot matters, and regularly do so as part of their services today. If the SEC adopts a categorization requirement with revisions, as we recommend, it is likely that many reporting persons will use PVAFs or other vendors to perform the categorization function. PVAFs, rather than reporting persons, categorizing ballot matters would result in greater consistency, as a single vendor would likely categorize the same ballot matter consistently across its investor clients and currently there are a small number of vendors that prepare Form N-PX filings. However, any changes that PVAFs and other vendors must make to their systems and processes to satisfy the SEC's revised reporting requirements under Form N-PX will likely result in increased costs that will be passed on to reporting persons, including funds and their shareholders.

B. Quantification of Shares Voted/Loaned

The SEC proposes to require disclosure of information about the number of shares that were voted or, if not known, the number of shares that were instructed to be cast. The SEC also proposes to require disclosure of the number of shares the reporting person loaned and did not recall.

We do not object to the SEC requiring reporting of the number of shares voted or instructed to be cast, although there may be a variety of legitimate reasons reporting persons do not vote proxies.[7] We appreciate that the Commission acknowledged concerns that ICI raised with respect

[7] As the SEC has recognized, "an investment adviser is not required to accept the authority to vote client securities . . . and [i]f an investment adviser does accept voting authority, it may agree with its client, subject to full and fair disclosure and informed consent, on the scope of voting arrangements, including the types of matters for which it will exercise proxy voting authority." *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, Release Nos. IA-5325; IC-33605 (Aug. 21, 2019) (Response to Question 1). In many cases, as discussed below, reporting persons do not know what matters will be on the ballot until after the record date. Reporting persons face even greater challenges in foreign markets that may cause them to not vote proxies of non-US issuers, including: (i) the need to provide certain legal documentation to vote, including powers of attorney that may be requested in foreign languages; (ii) requirements in certain countries regarding "share blocking;" (iii) not receiving notification of a proxy vote until after the record date or after the meeting has taken place; and (iv) in some

to the 2010 proposal, which would have required reporting persons to report the number of shares they were entitled to vote, as well as the number of shares that were actually voted.[8] We also appreciate that the Commission has clarified that the reporting person's records could be used to determine the number of shares voted, even if the records do not reflect a confirmed number of actual votes cast and received by the issuer.

For the reasons discussed below, however, we urge the SEC to *not* require reporting of shares loaned and not recalled.[9] Instead, to provide more relevant information about reporting persons' securities lending and share recall practices, the SEC should require reporting persons that engage in securities lending to describe, on Form N-PX, their policy regarding recalling lent securities for purposes of proxy voting (or reference their description of the policy, if the description is already disclosed in another SEC-filed document).[10] This approach would allow reporting persons to provide appropriate context for their share recall practices and would be consistent with global requirements and standards.[11] This information would complement the detailed information that registered funds currently report about their securities lending arrangements, including:

- Disclosing in a fund's registration statement information about the fund's income and fees or compensation related to its securities lending activities, and services provided by securities lending agents, during the fund's most recent fiscal year;[12]
- Identifying in the fund's financial statements, which are filed with the SEC and sent to shareholders twice each year, any securities out on loan, investment of cash collateral

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countries, a requirement to attend the meeting in person in order to vote. Share blocking requirements result in shareholders that wish to vote their proxies needing to deposit their shares before the date of the meeting with a designated depositary. Shares that will be voted cannot be sold until the meeting has taken place and the shares are returned to the shareholder's custodian bank. A fund might conclude that the benefits of voting in such a case are outweighed by the cost (*i.e.*, the lost liquidity in the shares).

[8] *See* ICI 2010 Comment Letter.

[9] Further, we note that Form N-PX is intended to provide information about funds' and, as proposed, institutional investment managers,' proxy voting records. Requiring reporting on Form N-PX of information regarding securities lending activities, which the SEC requires to be reported elsewhere, seems incongruous.

[10] We understand that some funds currently disclose their policy regarding the recall of lent securities as part of their proxy voting policy in their SAI. *See, e.g.,* Item 17 of Form N-1A.

[11] For example, Article 3i of the EU Shareholder Rights Directive (SRD 2) requires that asset managers disclose, among other things, "their policy on securities lending and how it is applied to fulfil its engagement activities if applicable, particularly at the time of the general meeting of the investee companies." Principle 12 of the UK Stewardship Code requires that, for listed equity securities, signatories "state what approach they have taken to stock lending, recalling lent stock for voting and how they seek to mitigate 'empty voting.'"

[12] *See, e.g.,* Item 19(i) of Form N-1A. *See also* Item 12 of Form N-CSR (requiring disclosure about securities lending activities by closed-end investment companies).

received, a liability reflecting the obligation to return the cash collateral at the conclusion of the loan, and income earned from securities loans;[13]

- Reporting on Form N-PORT, which is filed with the SEC and is publicly available, the fund's securities on loan, collateral received, and the borrowers of those securities;[14] and
- Reporting on Form N-CEN, which is filed with the SEC and is publicly available, the fund's securities lending agents, compensation types paid to securities lending agents, and whether the securities lending agent or another party has agreed to indemnify the fund with respect to securities lending losses.[15]

In proposing to require disclosure of the number of shares loaned and not recalled, the SEC intends to "provide transparency into how a reporting person's securities lending affects its proxy voting."[16] We disagree that the proposed disclosure would provide an accurate view of a reporting person's securities lending practices and their relationship to the person's proxy voting practices. The SEC seems concerned that its 2019 proxy voting guidance may have "tilted [the] calculus" for funds toward not recalling loaned securities to vote proxies.[17] It appears that the Commission is basing its policymaking on this issue on a recent academic study whose analysis, once vetted, may not support the authors' conclusions.[18] Based on extensive discussions with our members and with securities lending agents, we are not aware of changes in funds' securities

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[13] *See* Rule 6-04 of Regulation S-X; FASB Accounting Standards Codification Topic 860-30-25-6 through 860-30-25-8.

[14] *See* Items B.4 and C.12 of Form N-PORT. With the exception of certain non-public information reported on Form N-PORT, the information reported on the form for the third month of each fund's fiscal quarter is made publicly available upon filing.

[15] *See* Item C.6 of Form N-CEN.

[16] Proposing Release at 57489.

[17] For example, then-Acting Chair Lee has stated that:

> . . . many have called into question how well index funds harness the power of their voting capabilities to hold corporate managers accountable. Take, for example, securities lending. Because index funds cannot sell out of their positions, proxy voting becomes a particularly important tool for maximizing value. But the economic benefits of voting are diffused among all shareholders, while index funds face their own economic pressure to lend out their shares, or not recall shares, instead of voting. These pressures can also present potential conflicts of interest for advisers in light of fee splits and revenue sharing that an adviser may receive. The revenue generated by securities lending can lower costs when passed back to investors – but this should be carefully balanced against, and potentially moderated by, the value to shareholders in exercising oversight of boards and management in the companies they own. . .

Acting Chair Allison Herren Lee, *Every Vote Counts: The Importance of Fund Voting and Disclosure* (Mar. 17, 2021), *available at* https://www.sec.gov/news/speech/lee-every-vote-counts (citations omitted). We note that Acting Chair Lee's statement appears to assume that funds use an affiliated securities lending agent that is compensated with a share of the revenue from the securities lending arrangement, which is only permitted for the subset of funds that have SEC exemptive orders permitting such affiliated securities lending arrangements.

[18] Edwin Hu, Joshua Mitts & Haley Sylvester, *The Index Fund Dilemma: An Empirical Study of the Lending-Voting Tradeoff* (N.Y.U. L. & Econ. Research Paper No. 20-52, 2020), last revised Apr. 10, 2021, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3673531.

lending practices as a result of the SEC's 2019 proxy voting guidance. We urge the Commission to conduct its own due diligence on this study and obtain further evidence regarding these issues.

Furthermore, requiring reporting of securities loaned and not recalled may be misleading and would not provide investors or others with meaningful information about reporting persons' proxy voting practices or their securities lending practices. As Commissioner Roisman observed:

> . . . 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.
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> 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 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.[19]

As described below, there are a variety of legitimate reasons why funds and managers may not recall loaned securities prior to a proxy vote.

First, the SEC acknowledges that proxy statements typically are not delivered until after the record date.[20] This delay creates significant challenges for reporting persons to determine whether to vote before they have information about what will be on the ballot. In most instances, a reporting person must decide whether and when to recall loaned securities in the absence of knowing what matters will be on an issuer's proxy statement. Given this uncertainty and the unlikelihood of quickly relending any securities recalled, the fund risks forgoing lending revenue for an extended period to preserve the ability to vote matters of unknown importance.

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[19] Roisman Statement.

[20] Proposing Release at text accompanying n.109.

Second, a fund adviser may determine, consistent with its fiduciary duty, that the benefits to the fund of participating in a securities lending arrangement outweigh the benefit to the fund of voting on a proxy matter the fund deems routine. It is important to appreciate that the opportunity cost to a fund of recalling lent securities is not limited solely to income lost during the recall period—we understand that, due to the generally greater supply of securities available for loan than demand to borrow securities, following a recall, the borrower will enter a new loan with another lender. As a result, there is no guarantee that the original lender will find demand to relend those securities.

C. Description of Ballot Matters

To increase standardization of ballot descriptions, the SEC proposes to require reporting persons to use the same language to describe proxy voting matters on Form N-PX as used in the issuer's form of proxy. In addition, each voting matter would be required to be reported in the same order as presented on the issuer's form of proxy. The SEC believes these proposed changes would facilitate identification of identical matters on different Form N-PX filings.

We support the SEC's goal to increase standardization and comparability of ballot descriptions. However, requiring reporting persons to describe ballot matters using the same language, and present them in the same order, as in the issuer's form of proxy raises operational challenges and may increase costs for funds and their shareholders. To address these challenges, we recommend that the SEC require corporate issuers to data tag the description of each ballot matter in their proxy statements so that reporting persons can readily "pull" this data from the issuer's proxy statement. This would result in more consistent descriptions of the same ballot matters across reporting persons. We appreciate that any SEC requirement of data tagging by issuers would not apply to non-US issuers, so this would not offer a complete solution, but we believe it would significantly increase consistency.

Due to the operational challenges described below, we strongly recommend that the SEC *not* require that ballot matters be presented in the same order as in the issuer's form of proxy. Instead, we believe the SEC's concerns about comparability can be addressed through data tagging, particularly if the SEC adopts our recommendation to require corporate issuers to data tag the description of each ballot matter in the proxy statement.

Many ICI members use PVAFs or other vendors to prepare their Form N-PX filings. We understand from members that, currently, these vendors do not necessarily provide a description of each ballot matter that is identical to the description in the issuer's form of proxy. Instead, the vendor may provide a summary of the ballot description and, in some cases, a link to the issuer's proxy statement. In addition, vendors may list ballot items in a different order or using a different numbering system. As a result, operational changes would be required by reporting persons and their vendors to be able to provide this information in the form the SEC proposes.

Providing ballot descriptions as the SEC proposes may be particularly challenging with respect to non-US issuers. We understand that PVAFs, other vendors, or sub-custodians may bundle or unbundle proxy ballot matters relating to non-US issuers in a manner that does not necessarily correspond to how the matters are presented in the non-US issuer's form of proxy. Furthermore, translations of the non-US proxy ballot, if not originally in English, may differ across vendors. It is unclear from the Proposal whether the SEC intends that, for a non-US issuer, a reporting person provide a description of that issuer's ballot matter(s) in a foreign language if that is how the ballot matter is presented in the issuer's form of proxy. If the SEC expects the description to be in English, we recommend that the SEC clarify this point in its final rule.[21]

III. Compliance Dates

We appreciate that the SEC has proposed compliance dates for the amendments to Form N-PX that vary depending on when the amendments become effective relative to the form's reporting deadline. Based on the amendments the SEC proposes, however, we do not believe the proposed compliance dates will provide enough time for funds to enhance their systems to report additional information, and for managers that will be reporting on Form N-PX for the first time to develop the necessary systems and processes to file the form.

We therefore recommend that the SEC provide a minimum of one full reporting period for reporting persons to implement the final rule. To achieve this, we recommend that the SEC require that the first reports on amended Form N-PX be filed by the August 31 that is a minimum of 14 months from the rule's effective date.

The reason why 14 months is the minimum period of time needed for compliance is that funds and institutional managers will need one full reporting period under the amended rule to implement the extensive changes that the SEC proposes. Additional implementation time is necessary for funds to develop and enhance their systems to be able to report the additional items of information the SEC proposes to require. For example, funds will need to develop and implement new systems to be able to report the number of shares voted. If the SEC requires funds to categorize proxy ballot matters, funds will need to develop new processes, including oversight functions, to perform this function and report the information, or work with PVAFs or other vendors to perform this function. As many funds work with vendors to prepare and file Form N-PX,[22] funds expect that they may face potential challenges and delays in negotiating amendments to their contracts to reflect the new functions that would need to be performed to prepare amended Form N-PX and working with vendors to coordinate the operational changes that will be necessary to report the required data. The vendors will need time to make changes to

[21] Further, if the description has been translated, different translations may result in a further lack of comparability.

[22] In addition, as discussed in Section VI, some of our smaller fund members that currently prepare their Form N-PX internally expect that they will retain a vendor to prepare the form if the SEC adopts the changes to Form N-PX it proposes.

their systems or develop new systems to perform the functions their clients will expect from them under an amended rule. This process will be even more complex for sub-advised funds. Extensive coordination will be required among funds, PVAFs, intermediaries and, potentially, issuers. Members do not have control over the timing of actions taken by these third parties and expect these challenges would result in a lengthy implementation process.

Institutional investment managers, which will be reporting on Form N-PX for the first time, face particular challenges in implementing the say on pay reporting requirements. These managers will need to develop systems to identify each entity that has voting power, track how each say on pay vote was executed, and compile these votes into Form N-PX, potentially on a consolidated basis, if they are utilizing the optional joint reporting provisions. Managers also will face most of the challenges described above for funds, including the need to coordinate with vendors and, potentially, sub-advisers, as well as a lack of control over the timing of key implementation steps by vendors, intermediaries and, potentially, issuers.

Reporting persons also will need additional time to incorporate the new XML taxonomy into their systems. We recommend that the SEC release the taxonomy at least six months in advance of the date by which funds must file the revised form so that reporting persons can incorporate it into their filing systems. We also recommend that the SEC provide for a test period in which reporting persons can make test filings using the taxonomy in advance of the date by which funds must first file the revised form.

IV. Other Changes Regarding Reporting of Proxy Voting Information

ICI supports many aspects of the Proposal, as described below.

A. Completion of Dodd-Frank Say on Pay Rulemaking

We support the SEC completing the Dodd-Frank required say on pay rulemaking. Under the Proposal, an "institutional investment manager"[23] required to file reports on Form 13F would be required to disclose its say on pay votes on Form N-PX. The types of votes the manager would be required to report are the same as the types of votes required by Section 14A(a) and (b) of the

[23] An "institutional investment manager" is defined as "any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person." For example, banks, insurance companies, and broker-dealers are institutional investment managers. So are corporations and pension funds that manage their own investment portfolios. Investment advisers that manage private accounts, mutual fund assets, or pension plan assets are also institutional investment managers, as are bank trust departments. *See* Section 13(f)(6)(A) of the Securities Exchange Act of 1934 ("Exchange Act"); SEC, Frequently Asked Questions About Form 13F, *available at* https://www.sec.gov/divisions/investment/13ffaq.htm.

Exchange Act.[24] In a change from the SEC's 2010 proposal, a manager would only be required to report a say on pay vote for a security if it both possesses voting power and exercises that power. For purposes of Form N-PX, the exercise of voting power would mean the actual use of voting power to influence a voting decision.[25] We support the current approach, as it would limit reporting to only those say on pay votes that reflect a manager's exercise of its voting power. This approach would result in more meaningful data on say on pay votes, without the "noise" of proxy votes that were not directed by the manager.

B. Data Tagging

The SEC proposes to require reporting persons to file reports on Form N-PX in a custom eXtensible Markup Language (XML)-based structured data language ("custom XML"). We agree that tagging the data reported on Form N-PX will make the information easier to use and sort. We appreciate that, in response to concerns about cost that were raised by commenters on the 2010 proposal, the SEC proposes to bear the costs of developing electronic "style sheets" and applying them to the reported XML data in order to represent that data in a "human readable" form.

As discussed above in Section III, it is critical that the SEC provide a sufficiently long compliance period for funds and managers to incorporate XML reporting. Reporting persons and their vendors will need adequate time to incorporate the XML tags into their systems and conduct testing before the SEC requires filing of amended Form N-PX.

C. Website Availability of Fund Proxy Voting Information

Currently, funds are required to disclose, in their registration statements, that their proxy voting records are available (i) without charge, upon request, by calling a specified toll-free number, or on or through the fund's website, or both, and (ii) on the SEC's website.[26] The SEC proposes to update this requirement so that a fund would have to disclose that its proxy voting record is publicly available, without charge, on (or through) the fund's website *and* is available upon request, by calling a toll-free number and, if any, using an email address. The Commission, citing ICI research, proposes this change in recognition that investors increasingly prefer to access investment information electronically.[27]

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[24] Section 14A generally requires public companies to hold non-binding say on pay shareholder advisory votes to: (i) approve the compensation of its named executive officers; (ii) determine the frequency of such votes; and (iii) approve "golden parachute" compensation in connection with a merger or acquisition.

[25] *See* Rule 14AD-1(d) under the Exchange Act, as proposed to be amended.

[26] *See, e.g.*, Item 17 of Form N-1A.

[27] *See* Proposing Release at text accompanying n.205.

Given investors' increasing preference to access investment-related materials electronically, we support this aspect of the Proposal, subject to two caveats. First, we recommend that the Commission exclude from the requirement that a fund disclose its proxy voting record on its website those funds that are not publicly offered and therefore may not have a fund website, such as registered funds the shares of which are privately placed. Such funds could, however, provide a link to their proxy voting records in their SEC-filed registration statements. And, of course, investors still would be able to request this information by phone.

Second, we encourage the Commission to make explicit in any final rule that a fund could comply with the proposed requirement to post its voting record on its website by providing a direct link on its website to the HTML-rendered Form N-PX report on the SEC's EDGAR system. Allowing funds to comply with any final requirement in this manner may be particularly important in limiting costs for smaller funds that do not currently post their proxy voting records on their websites.

More broadly, we urge the SEC to prioritize rulemaking to facilitate the ability of funds to take advantage of electronic delivery (e-delivery) to communicate with their investors. In November 2020, the SEC's Asset Management Advisory Committee voted to recommend that the SEC permit firms to deliver documents to investors by e-delivery, subject to appropriate investor protections.[28] ICI strongly supports the SEC making e-delivery the default method for funds to communicate with their shareholders, with the ability to elect paper delivery at any time.[29] Doing so would recognize fund shareholders' nearly universal access to the internet and broadband, and their strong preference to receive investment information through electronic means.

D. Optional Joint Reporting Provisions

The SEC proposes optional joint reporting provisions to provide flexibility to reporting persons and prevent duplicative reporting on Form N-PX. The proposed provisions would permit: (i) a single manager to report say on pay votes in cases where multiple managers exercise voting power; (ii) a fund to report its say on pay votes on behalf of a manager exercising voting power

[28] *See* US Securities and Exchange Commission, Asset Management Advisory Committee, *Recommendations Regarding COVID-19 Operational Issues* (November 5, 2020), *available at* https://www.sec.gov/spotlight/amac/operational-issues-amac-recommendations-final-110520.pdf.

[29] *See, e.g.*, Letter to Ms. Vanessa Countryman, Secretary, US Securities and Exchange Commission, from Susan Olson, General Counsel, and Dorothy Donohue, Deputy General Counsel, Investment Company Institute, dated Dec. 21, 2020, *available at* https://www.ici.org/system/files/attachments/pdf/20_ltr_disclosure.pdf; Letter to the Honorable Jay Clayton, Chairman, US Securities and Exchange Commission, from Eric J. Pan, President & CEO, Investment Company Institute, dated Dec. 10, 2020, *available at* https://www.ici.org/system/files/attachments/pdf/20_ltr_secedelivery.pdf; Letter to Dalia Blass, Director, Division of Investment Management, US Securities and Exchange Commission, from Dorothy Donohue, Deputy General Counsel, Sarah Holden, Senior Director, Retirement & Investor Research, and Joanne Kane, Senior Director, Operations & Transfer Agency, Investment Company Institute, dated Sept. 10, 2020, *available at* https://www.ici.org/system/files/attachments/pdf/20_ltr_edelivery.pdf.

over some or all of the fund's securities; and (iii) affiliates to file joint reports on Form N-PX even though they do not exercise voting power over the same securities.

We appreciate the flexibility optional joint reporting would provide, and strongly support this aspect of the Proposal. Given the different types of voting and management arrangements that exist, we support these provisions being optional, rather than mandatory. The optional joint reporting provisions would allow funds and managers to avoid duplicative reporting and structure their reporting on Form N-PX in the manner that is most efficient for them. As the SEC recognizes, funds already must report their say on pay votes. Under the proposed optional joint reporting provisions, a fund's manager would not be required to separately report say on pay votes for the fund's securities over which the manager exercises voting power. Instead, the manager could file a Form N-PX report that identifies each manager and fund reporting on its behalf. Larger firms that have affiliated managers would also find useful the proposed joint reporting option permitting affiliates to file joint reports on Form N-PX even if they do not exercise voting power over the same securities. This option would allow affiliated managers to report at the holding company level, which may provide operational efficiencies and cost savings.

V. Timing of Reporting

The SEC does not propose to change the current time frame for reporting proxy votes on Form N-PX. Form N-PX must be filed annually, no later than August 31 of each year, for the most recent 12-month period ended June 30. The Commission proposes to apply the same reporting time frame for managers.

We strongly support retaining the existing reporting time frame and applying it to institutional investment managers. Doing so would promote consistency and comparability across Forms N-PX filed by both funds and managers. We agree with the SEC that the current reporting time frame "appropriately balances the benefits of prompt reporting and the burdens associated with that reporting" and that "the benefits of public reporting of proxy votes by funds and managers would not significantly increase with faster reporting . . ."[30] Given that the vast majority of proxy votes take place in the second quarter of the calendar year, more frequent reporting would not yield a significant amount of additional information about funds' voting practices and, instead, may be confusing to investors and others because most of the votes would be concentrated during the few months of the calendar year that comprise "proxy season."

We urge the SEC to also retain the 60-day period after the end of the reporting period to file Form N-PX. As the SEC knows, Form N-PX filings may be lengthy and include information about thousands of proxy votes. Our members spend significant time compiling and verifying the proxy voting data that is reported on Form N-PX, working with vendors and, where applicable,

[30] Proposing Release at 57497.

with sub-advisers. This process currently requires most or all of the 60-day filing period to complete. If the SEC adds additional reporting elements, as proposed, members will need at least as much time to prepare and file amended Form N-PX.

VI. Considerations for Smaller Funds

As the SEC works to finalize the proposed amendments to Form N-PX, we urge the Commission to analyze more closely the costs and burdens of the proposed amendments for smaller funds and managers and, more broadly, consider how these increased regulatory obligations cumulatively would affect smaller funds and managers. We strongly support the work of the SEC's Division of Investment Management[31] and the SEC's Asset Management Advisory Committee[32] to consider potential ways to reduce burdens on smaller funds. Yet the Commission's economic analysis of the Proposal does not address key costs and burdens of the proposed amendments for smaller firms. For example, many smaller funds do not currently use a vendor to prepare Form N-PX but anticipate that they may hire one for this function if the SEC adopts the amendments as proposed. The SEC's economic analysis does not discuss this likely cost.

Our smaller fund members have noted that the proposed amendments would increase their filing costs and explained more generally that each additional regulatory obligation imposes cumulatively greater costs and burdens on smaller firms. For smaller fund complexes, new regulatory costs can be larger in relative terms because of the fixed costs involved and the inability to achieve certain economies of scale.

Smaller fund members also note that, given the likely lack of impact their holdings typically have on voting outcomes or the markets generally, certain of the SEC's proposed requirements make little sense for smaller funds, including quantification of shares voted, as well as shares loaned and not recalled. To the extent the SEC or investors wish to assess whether a smaller fund's voting practices are consistent with its strategy and disclosures, Form N-PX's current disclosure requirements (*e.g.*, disclosing whether the fund voted for or against a proposal, or abstained) suffice.

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[31] *See* Division of Investment Management Director Dalia Blass, *Keynote Address: ICI Mutual Funds and Investment Management Conference*, (Mar. 18, 2019), *available at* www.sec.gov/news/speech/speech-blass-031819.

[32] *See generally* Report and Recommendations on Regulatory Approach for Small Advisers and Funds, SEC Asset Management Advisory Committee (Nov. 1, 2021), *available at* https://www.sec.gov/files/final-report-and-recommendations-small-advisers-and-small-funds-subcommittee-110121.pdf.

VII. Other Important Proxy Issues

The Commission has acknowledged that there are other important proxy voting reform matters that must be addressed.[33] While we appreciate that these issues are beyond the scope of the Proposal, we urge the Commission to address these critical issues without delay including, most importantly for funds, the challenges unique to the fund proxy system, reform of the processing fee framework, reform of the OBO/NOBO system, and the inability to confirm how shares were voted ("end-to-end vote confirmation"). We have addressed these issues extensively in prior letters to the Commission, and briefly note each issue below.

A. Improving the Proxy System for Funds as Issuers

Like operating companies, funds prepare proxy materials and seek shareholder approvals in connection with their shareholder meetings. In many respects, however, the accompanying challenges for funds are unique and more daunting than those for other issuers, primarily due to:

- Funds' diffuse and retail-oriented shareholder bases;
- Retail shareholders' relatively low proxy voting participation rates; and
- Severe legal and other impediments to communicating directly with fund shareholders.

These challenges are exacerbated by requirements of the Investment Company Act of 1940 itself and certain of its rules. We have outlined in detail these difficulties, the costs they impose, and how the Commission could remedy them.[34] Commissioners Roisman and Lee also have recognized these challenges,[35] and SEC-led reform would provide tangible benefits to fund shareholders.

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[33] The SEC's Spring 2021 rulemaking agenda includes, among other rulemakings, "Proxy Process Amendments" (https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM16) and "Amendments to Improve Fund Proxy System" (https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM73).

[34] *Analysis of Fund Proxy Campaigns: 2012–2019,* Investment Company Institute (December 2019), *available at* www.sec.gov/comments/4-725/4725-6580709-201124.pdf; Letter to Vanessa Countryman, Acting Secretary, US Securities and Exchange Commission, from Paul Schott Stevens, President and CEO, Investment Company Institute, dated June 11, 2019, *available at* www.sec.gov/comments/4-725/4725-5658296-185774.pdf.

[35] Commissioner Elad L. Roisman, *Remarks at SEC Speaks: Encouraging Smaller Entrants to Our Capital Markets* (Apr. 8, 2019) *available at* www.sec.gov/news/speech/speech-roisman-040819 ("I am also sensitive to the challenges that funds, as issuers themselves, face when they are required to seek shareholder proxies on certain matters, including the costs involved."); Acting Chair Allison Herren Lee, *Every Vote Counts: The Importance of Fund Voting and Disclosure* (Mar. 17, 2021), *available at* https://www.sec.gov/news/speech/lee-every-vote-counts ("These unique [fund] problems translate into increased expenses for funds to carry out their regulatory obligations to obtain shareholder approval for items such as a change in a fund's fundamental investment policy and certain agreements. … Both of these issues – problems [funds face in] obtaining a quorum and problems confirming fund votes – deserve attention as we examine and attempt to modernize our proxy voting system.").

B. Reform of the Processing Fee Framework

SEC rules require funds to reimburse intermediaries for reasonable expenses incurred in forwarding fund materials to beneficial owners of fund shares. Intermediaries generally outsource forwarding of fund materials to a vendor that charges the fund for this service. The New York Stock Exchange (NYSE) fee schedule, which governs the amounts intermediaries and vendors charge funds, is ill-suited for the distribution of fund materials and its fees bear little relation to the actual work/cost of distributing materials.

Last December, NYSE proposed to transfer to FINRA oversight for the processing fee schedule.[36] In August, the SEC staff, under delegated authority of the Commission, disapproved NYSE's proposal,[37] and NYSE subsequently filed a petition for review ("Petition") of that decision.[38] ICI has urged the SEC to grant the Petition and use this opportunity to re-evaluate the broader processing fee framework which forces fund investors—many of whom are retail investors—to pay excessive and unreasonable fees to receive SEC-required disclosure documents.[39]

ICI has made specific recommendations on how the SEC can reform the processing fee framework in the interest of investors.[40] In the near term, the SEC should issue a statement

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[36] *See* Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Its Rules Establishing Maximum Fee Rates To Be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners, 85 Fed. Reg. 83119 (December 21, 2020), *available at* https://www.govinfo.gov/content/pkg/FR-2020-12-21/pdf/2020-28010.pdf.

[37] *See* Order Disapproving a Proposed Rule Change to Amend its Rules Establishing Maximum Fee Rates to be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners, SEC Release No. 34-92700 (Aug. 18, 2021), 86 FR 4735l (Aug. 24, 2021), *available at* https://www.federalregister.gov/documents/2021/08/24/2021-18119/self-regulatory-organizations-new-york-stock-exchange-llc-order-disapproving-a-proposed-rule-change.

[38] *See* Petition of the New York Stock Exchange for Review of an Order Disapproving the New York Stock Exchange LLC's Proposed Rule Change to Amend its Rules Establishing Maximum Fee Rates to be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners (Sept. 1, 2021), *available at* https://www.sec.gov/rules/sro/nyse/2021/34-92700-20210901-nyse-petition-for-review.pdf.

[39] Funds are being forced to pay *three to five times more* to deliver materials through broker-dealers and their vendors than they would pay to deliver the same materials directly. These higher costs are being borne by fund shareholders.

[40] For a more detailed description of our concerns about processing fees and recommendations to reform the processing fee framework, please see Letter to Ms. Vanessa Countryman, Secretary, US Securities and Exchange Commission, from Sarah Bessin, Associate General Counsel, and Joanne Kane, Senior Director of Operations and Transfer Agency, Investment Company Institute, dated May 13, 2021, *available at* https://www.ici.org/system/files/2021-05/33531a.pdf; Letter to Ms. Vanessa Countryman, Secretary, US Securities and Exchange Commission, from Dorothy Donohue, Deputy General Counsel, Securities Regulation, and Joanne Kane, Senior Director of Operations and Transfer Agency, Investment Company Institute, dated Jan. 8, 2021, *available at* https://www.ici.org/system/files/attachments/21_ltr_secfinra.pdf; Letter to Mr. Brent J. Fields, Secretary, US Securities and Exchange Commission, from Shelly Antoniewicz and Joanne Kane, Investment Company Institute, dated Jan. 17, 2019, *available at* https://www.sec.gov/comments/s7-13-18/s71318-4844298-

reminding broker-dealers and their vendors that SEC rules require that these processing fees be "reasonable" and that simply charging funds the maximum fees allowed under the flawed NYSE schedule does not satisfy that standard. Longer term, the SEC should take steps to enable funds to select their own vendor and directly negotiate their own pricing, which would eliminate the need for any fee schedule. Alternatively, the Commission could replace the NYSE fee schedule with a new fee schedule—considering funds' disclosure delivery obligations, eliminating unreasonable billing practices, engaging an independent third party to review the reasonableness of the fees—and create a robust regulatory oversight framework.

C. Reform of the OBO/NOBO System

Under current SEC rules, funds may only communicate directly with their registered shareholders and must rely on intermediaries to correspond with beneficial shareholders. SEC rules also require intermediaries to classify beneficial owners as either Non-Objecting Beneficial Owners (NOBOs) or Objecting Beneficial Owners (OBOs). Funds are prohibited from contacting OBOs, which makes it difficult for funds to achieve quorum for proxy votes.

The SEC should prioritize reform of the OBO/NOBO system. As outlined by ICI in the August 2020 report of the OBO/NOBO working group and described in our prior letters to the Commission,[41] the SEC should take concrete steps to further reform the OBO/NOBO system so that funds can deliver proxy and other regulatory materials to shareholders, using a vendor of their choosing. Taking these steps would increase service provider competition and lower costs for funds and their shareholders.

D. End-to-End Vote Confirmation

Funds take great care in analyzing proposals, casting votes, and reporting them publicly, yet funds and shareholders generally are unable to confirm whether their votes have been tabulated in accordance with their instructions. We strongly recommend that the Commission consider pursuing a rule that would impose certain standardized requirements—with respect to information subject to confirmation and specified time frames—that issuers (or their agents) must follow to confirm votes upon a shareholder's request.[42]

177198.pdf; Letter to Mr. Brent J. Fields, Secretary, US Securities and Exchange Commission, from Susan Olson, General Counsel, Investment Company Institute, dated Oct. 31, 2018, *available at* https://www.ici.org/system/files/attachments/18_ici_processing_fees_ltr.pdf ("ICI October 2018 Letter").

[41] *See, e.g.*, ICI October 2018 Letter.

[42] Such a rule would require that issuers have access to all information necessary to confirm votes to shareholders (or their agents). A rule should support verification of voting, permit flexible alternatives to encourage competition and cost-effective solutions, and be technology-neutral to allow for future improvements.

* * *

Thank you for the opportunity to provide comments on the Proposal. If you have any questions on our comment letter, please feel free to contact Susan Olson at (202) 326-5813 or Sarah Bessin at (202) 326-5835.

Sincerely,

/s/ Susan Olson	/s/ Sarah A. Bessin
Susan Olson General Counsel	Sarah A. Bessin Associate General Counsel

cc: The Honorable Gary Gensler
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee
The Honorable Caroline Crenshaw

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