



December 14, 2021

Ms. Vanessa Countryman
Secretary
U.S. 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; Release Nos. 34-93169; IC 34389)

Dear Ms. Countryman:

The U.S. Chamber of Commerce (“the Chamber”) appreciates this opportunity to comment on the Securities and Exchange Commission’s (“SEC” or “Commission”) proposed rulemaking entitled “Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers” (“Proposal”).

For over a decade, the Chamber has worked collaboratively with a bipartisan group of policymakers in Congress, the SEC, issuers, institutional investors, and others to promote a proxy system that is efficient, transparent, and which prioritizes long-term economic return for millions of American investors. Throughout this period, the SEC has solicited extensive public comment¹ and thoroughly examined issues related to the U.S. proxy system. The Chamber’s diverse membership and longstanding engagement with policymakers and the private sector provide us with a unique perspective.

The Proposal includes some constructive provisions that could improve the usability of Form N-PX disclosures for readers, such as moving N-PX reporting to an eXtensible Markup Language (XML) format. However, the proposed “categories” of proxy issues included in the Proposal – and which Form N-PX filers would be mandated to follow – are based upon only one proxy season and will likely become stale over time. The categorization approach also puts the SEC in the problematic position of determining whether hot-button political and social issues fall under particular categories.

As the SEC considers the Proposal, the Chamber offers the following viewpoints and recommendations:

¹ E.g. Roundtable on the Proxy Process (11/15/18), available at: <https://www.sec.gov/proxy-roundtable-2018>; Release No. 34-62495, *Concept Release on the U.S. Proxy System* (7/14/10), available at: <https://www.sec.gov/rules/concept/2010/34-62495fr.pdf>; Roundtable on Proxy Advisory Services (12/5/13), available at: <https://www.sec.gov/news/otherwebcasts/2013/proxy-advisory-services-roundtable-120513.shtml>

1. The SEC should consider Form N-PX changes that are targeted and focused on enhancing the usability and reliability of voting data at minimal compliance cost.
2. The proposed categories for funds to disclose proxy votes are based upon only one proxy year and will inevitably become obsolete over time. The proposed categories also do not consider the universe of proposals companies may now receive in light of the “broad societal impact” standard set forth in SLB 14L.

Our thoughts are discussed in greater detail below.

The SEC should consider Form N-PX changes that are targeted and focused on enhancing the usability and reliability of voting data at minimal compliance costs.

The Proposal generally offers very little in terms of explaining why expanded Form N-PX disclosures are necessary or how they would benefit investors. The Proposal merely states that “investors have an interest in how funds vote” and that “in recent years, investors have increased their focus on how funds vote on environmental, social, and governance-oriented matters.”² The Proposal provides no further context or definition about what “investors” are currently interested in or how they are using Form N-PX. There is noticeably little discussion about the extent to which retail investors rely on Form N-PX to make decisions about where to invest their savings.

Commissioner Peirce raised similar concerns in her dissenting statement to the Proposal, stating that “...how or why a fund votes, or even *whether* a fund votes on a particular issue at a particular portfolio company is unlikely materially to influence an investor’s choice to invest in a particular fund. The proposing release, however, is replete with statements insisting that investor demand for more data on specific fund votes compels this rulemaking.”³ Commissioner Peirce further noted that “the 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.”⁴ We do not think these issues raised by Commissioner Peirce should be ignored as the SEC considers significant changes to the content requirements of Form N-PX.

We urge the SEC to focus on targeted reforms that could both reduce regulatory costs for Form N-PX filers while also enhancing usability for investors. For example, the shift to XML could make it easier to analyze proxy voting history and patterns and compare them across different asset managers. Such a targeted and incremental approach would be preferable to rigid mandates that fundamentally change the substance of Form N-PX disclosures.

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² Proposal at 8

³ Statement on Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (September 29, 2021)

⁴ *Id.*

the universe of proposals companies may now receive in light of the “broad societal impact” standard set forth in SLB 14L.

The Proposal would require funds to report their proxy votes based upon 16 standardized “categories,” under which funds would have to itemize their proxy votes. The proposal also includes a number of ambiguous “subcategories” that will be open to subjective interpretation by the SEC in the future. Filers may also place the same votes under different categories, potentially confusing users who rely on Form N-PX and undermining the purpose of the Proposal.

The SEC acknowledges these proposed categories are based upon a review *only* of the 2020 proxy season. It is unclear why the SEC chose to review only one proxy season, but it is likely that the categories laid out in the Proposal will eventually become stale as investor interests evolve. Commissioner Roisman pointed out this concern in a statement: “By freezing in place categories that reflect issues that *last year’s* shareholders care about, we risk relegating future shareholder interests to an “Other” category...”

More importantly, the SEC seems to be assuming with the Proposal that investor interests on certain issues will always revolve around topics that may have been popular during the 2020 proxy season. What if investors begin demanding that companies be responsive to societal issues that are currently *not* on the SEC’s radar? To that end, rather than determining specific categories on its own, the SEC could instead allow the private sector to collaborate on category definitions and change Form N-PX reporting more organically as investor interests evolve.

We also observe that the Proposal does not consider the potential impact of the recently-issued staff legal bulletin 14L (“SLB 14L”).⁵ SLB 14L invites shareholders to submit proposals at public companies that implicate issues of a “broad societal impact,” even if an issue has no nexus to the underlying business. In the wake of SLB 14L and the staff’s new position on providing no-action relief for shareholder proposals, there is hardly any limit on the scope of subject matter companies may have to grapple with during proxy season. Topics not currently captured by the proposed categories – no matter how important they may be to investors or the extent of the “broad societal impact” they involve - would be relegated as “Other” under the Proposal.

The Chamber recently sent a letter to Chairman Gensler regarding our concerns over SLB 14L and its potential to further politicize the proxy process and turn boards of directors into debating societies.⁶ We believe those concerns are relevant as the Commission considers the Proposal and potential changes to Form N-PX. The letter is incorporated by reference in the footnote below and we request that it be made a part of the record for this rulemaking.

Conclusion

⁵ Shareholder Proposals: Staff Legal Bulletin 14L (CF) (November 3, 2021)

⁶ <https://www.centerforcapitalmarkets.com/letter/ccmc-comments-the-sec-on-the-rescission-and-replacement-of-staff-guidance-pertaining-to-the-shareholder-proposal-process/>

While the Chamber welcomes this opportunity to comment on the Proposal, we believe there is much the SEC must consider and analyze prior to finalize changes to Form N-PX reporting requirements. We stand ready to assist and be a resource for the Commission and staff on the Proposal and related proxy issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long horizontal flourish.

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce