



December 14, 2021

Submitted by email

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies;
Reporting of Executive Compensation Votes by Institutional Investment Managers*
Release Nos. 34-93169; IC-34389
File No. S7-11-21

Dear Ms. Countryman:

Thank you for the opportunity to comment on the amendments to the Commission's rules and forms on the reporting of proxy votes that were recently proposed by the Securities and Exchange Commission.¹

Proxy voting is a critical component of the corporate governance system. Glass Lewis believes the proposed rules will further enhance the transparency of such votes, reinforce the importance of proxy voting and highlight the diligent and thoughtful decision-making that institutional investors are already dedicating to the proxy voting process. We therefore support the proposed rules and encourage their adoption, subject to the three practical considerations detailed below.

Founded in 2003, Glass Lewis is a leading independent proxy advisor. As a proxy advisor, Glass Lewis provides proxy research and vote management services to institutional investor clients throughout the world. While, for the most part, investor clients use Glass Lewis research to help them make proxy voting decisions, these institutions also use Glass Lewis research when engaging with companies before and after shareholder meetings. Further, through Glass Lewis' web-based vote management system, Viewpoint, Glass Lewis provides investor clients with the means to receive, reconcile, and vote ballots according to custom voting guidelines and record-keep, audit, report, and disclose their proxy votes.

Glass Lewis serves more than 1,300 institutional investor clients — primarily public pension funds, mutual funds and other institutions that invest on behalf of individual investors and have a fiduciary duty to act, including through proxy voting, in the best interests of their beneficiaries. Many of these clients use our vote management services, including our vote reporting and disclosure services, to assist them in filing Form N-PX, as well as meeting the proxy voting transparency mandates of other markets.

¹ "Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers," Exchange Act Rel. No. 93169, Investment Company Act Rel. No. 34389 (Sep. 29, 2021), 86 Fed. Reg. 57478 (Oct. 15, 2021).



When the Commission first proposed rules to implement Section 951 of the Dodd-Frank Act in 2010, Glass Lewis expressed concern with both the concept of shared voting authority that was used in describing when institutional investment managers (“managers”) must report their say-on-pay votes and the proposed implementation timetable.² We appreciate the consideration of these comments that is evident in the current proposal. While the current proposal’s new test of whether the manager “has voting power and exercises that power” will undoubtedly raise some interpretive questions and challenges, it avoids the complexity and costs that would have been associated with implementing the “shared voting authority” concept.

We also appreciate the thought that went into the longer and more flexible implementation periods in the proposal. Initial implementation of manager say-on-pay vote reporting, as well as the new Form N-PX reporting format, will present significant challenges and effort for managers, registered management investment companies (“funds”), and their service providers. It is critical there be enough time after the rules are finalized for all parties involved to make the systems and process changes that will be needed for successful implementation.

We also continue to strongly support synchronizing the reporting period and filing deadline for managers with the existing Form N-PX reporting period and filing deadline for funds. Utilizing the same timetable enables operational efficiencies and also makes it easier for the public to review voting across all types of institutional investors.

We do have practical concerns with three aspects of the proposed rules.

1. Identification of Proxy Voting Matters.

The Commission proposes to require Form N-PX reports to identify ballot issues “using the same language as on the form of proxy.” While the Commission notes that market participants have expressed different opinions about the practicality of standardizing descriptions of proxy matters, it asserts that requiring these descriptions to track the issuer’s form of proxy would address these practical issues. This is so because, under the SEC’s proxy rules, the form of proxy “must identify clearly and impartially each separate matter intended to be acted upon.”

This rationale, however, only applies to issuers subject to the SEC’s proxy rules. At least for funds, Form N-PX requires them to report their proxy votes at companies that are not subject to such rules. In practice, the descriptions of proxy voting matters by such companies vary widely between markets and, at least in some cases, are neither concise nor particularly descriptive, and, in many cases, are not in English. We believe the SEC should permit some flexibility to N-PX filers in situations in which using the exact same words as in the issuer’s form of proxy would be impractical or unhelpful. We believe that

² See Letter of John Wieck, Chief Operating Officer, Glass Lewis, November 18, 2010, on “Reporting of Proxy Votes on Executive Compensation and Other Matters,” Exchange Act Rel. No. 63123 (Oct. 18, 2010), 75 Fed. Reg. 66622 (Oct. 28, 2010), available at <https://www.sec.gov/comments/s7-30-10/s73010-19.pdf>.



such flexibility would be used fairly infrequently and that, in any event, the separate requirement to categorize proxy votes would continue to promote comparability in such circumstances.³

2. Disclosure of Shares Loaned and Not Recalled.

The Commission also proposes to require Form N-PX reporting of the number of shares the fund or manager loaned and did not recall to vote. This disclosure, which was not proposed in 2010, is intended to “provide transparency into how a reporting person’s securities lending affects its proxy voting.” In terms of feasibility, the Commission believes that this information should be “easier for reporting persons to obtain than the information the 2010 proposal would have required,” citing the earlier proposal to disclose the number of shares the reporting person was entitled to vote or over which it had shared voting power.

We believe the Commission should consult with relevant market participants and fully consider the potential challenges and costs of mandating disclosure of this information before requiring it.⁴ While we appreciate that obtaining this information may not present the same challenges as what was proposed in 2010, that does not mean there are not significant challenges and costs associated with reporting such information.

As the proxy vote reporting service provider for many funds today, we do not routinely collect or have a readily available source for the point-in-time information that would be needed to make this disclosure. Reliably and efficiently collecting and disseminating such information across the universe of reporting persons would take the concerted actions of multiple industry participants, including asset owners, asset managers, securities lending agents, custodians and proxy vote reporting service providers. It will take time and effort to develop the infrastructure and processes to do so, with attendant costs.

Moreover, while we recognize the general value of transparency, the inferences that may be drawn from a reporting person’s not recalling shares to vote may be unjustified, given that SEC rules today do not require a meeting agenda or proxy statement to be delivered before the record date.⁵ This disclosure would, at a minimum, be more meaningful if it was preceded by this common-sense reform to today’s proxy plumbing.

³ Recognizing the jurisdictional issues, we would also encourage the Commission to consider whether steps could be taken to promote uniformity in the description and categorization of proxy voting matters at the issuer level.

⁴ While we are not far enough along in our development process to provide reliable estimates at this time, we note, as others also have, that the estimated hour and cost burdens in the Commission’s Paperwork Reduction Act and Economic Analyses may underestimate the time and cost of implementing the proposed changes.

⁵ See Scott Hirst and Adriana Z. Robertson, “Hidden Agendas in Shareholder Voting” (August 13, 2021) (noting that, in over 88% of shareholder votes today, investors have not been notified what they will be voting on by the record date and therefore must make the trade-off between recalling shares to vote or continuing to make them available for loan “in the dark” and arguing that the SEC should require public companies to file proxy statements at least five days before the record date for the meeting), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3833304. Others have also noted that this disclosure would not shed any light on the foregone revenue (which may have been passed on to the fund or manager’s investors or clients) associated with recalling shares.



3. Proxy Voting Subcategories.

The Commission also proposes to require Form N-PX reports to categorize all ballot issues using a specified list of categories and subcategories. The categories and subcategories are intended to help investors “readily identify votes on matters that are important to them” and compare how funds and managers voted on specific types of matters. The categories and subcategories are based on ballot issues from the 2020 proxy season, but would be specified in the rule and therefore not change over time unless the rule were amended. Form N-PX reporters “would be required to select multiple categories or subcategories for the matter if applicable,” and, if a vote defies subcategorization, could select “other” as a subcategory and provide a brief description of the subject matter of the vote.

The Commission seeks comment, among other things, on whether it should “require reporting persons to use high-level categories to identify different types of votes, or should we require reporting persons to use subcategories, as proposed?” We do think the costs and benefits of mandating the use of subcategories should be reconsidered.

While we appreciate the value of enhancing the standardization and comparability of Form N-PX reports, much of that benefit would be achieved through the use of the higher-level categories and the standardized identification of proxy voting matters, coupled with the requirement to report in a structured data language. While the categories themselves are relatively clear and discrete, that is less true of the subcategories. Assigning ballot items to one or more specific subcategories will often require a high degree of judgment, leading to divergence among Form N-PX filers and therefore detracting from the subcategories’ intended usefulness.

Moreover, proxy voting issues, particularly those raised by shareholder proposal, often change over time and it is not practical or realistic to expect the Commission to be able to regularly update the rule to account for these changes. As this happens, we would expect Form N-PX reporters to increasingly use the “other” subcategory, further diminishing the subcategories’ value for their intended purpose.

Thank you for your consideration of our comments.

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