

FUNDamentals: Form N-PX — Institutional Investment Managers Must File, Even if No Proxies Were Voted

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With Form ADV annual updating amendments due for many investment advisers by the end of next month, advisers should consider whether to update their proxy voting policies and related disclosure in Part 2A, Item 17 in light of Form N-PX reporting requirements.

Form N-PX was adopted along with amendments to Rule 14Ad-1 of the Securities Exchange Act of 1934 (the Exchange Act) in 2022 to require institutional investment managers who file Form 13F under the Exchange Act to file an annual report on Form N-PX with the U.S. Securities and Exchange Commission (SEC) containing their proxy voting record for executive compensation votes, or so called “say-on-pay” matters, no later than August 31 of each year for the most recent 12-month period ended June 30. Pursuant to Rule 14Ad-1, every institutional investment manager must make a Form N-PX filing even if the manager never voted any proxies during the reporting period. There are multiple reporting options available, as described in greater detail below, based on whether the manager exercised voting power on say-on-pay matters and if other entities are also reporting related votes.

What Is Form N-PX?

Form N-PX is a required annual filing for institutional investment managers that have exercised voting power over securities for proxy votes related to say-on-pay matters. This two-part test requires managers to report for a security only if the manager: (1) has the power to vote, or direct the voting of, a security; AND (2) “exercises” this power to influence a voting decision for the security. Voting power can exist or be exercised either directly or indirectly by way of a contract, arrangement, understanding, or relationship. Investment managers may be considered to have exercised voting power even if they abstained from voting. Importantly, a manager that determines not to vote on a say-on-pay matter would still be exercising voting power.

What Type of Filing Is Required?

Depending on whether or not the filer has “exercised voting power” over any say-on-pay matters, different filings are required:

- **Institutional Manager Notice Report:** An institutional investment manager may submit a notice filing that includes just the “Cover Page” and required signature (and omits the more detailed security by security reporting) if it can meet one of the following three criteria:

- The filer did not exercise voting power for any reportable voting matter.
- The filer has a clearly disclosed policy that it does not vote on proxies, and no proxy votes were cast.
- All proxy votes that would otherwise be reportable by the filer have been reported by another filer.

It is important to note that with respect to the first trigger, the filer not exercising voting power for any reportable voting matter, the institutional investment manager would be deemed to have exercised its voting power if it had the power to vote a proxy but determined not to vote such proxy. However, it would not be deemed to exercise its voting power if there were no “say-on-pay” votes during the period for securities over which the institutional investment manager had the power to vote proxies.

Further, it should be noted that in order for an institutional investment manager to file the “Cover Page” only notice filing in reliance on the institutional investment manager maintaining and having duly disclosed a policy that it does not vote proxies, the institutional investment manager must have had such a policy during the entirety of the period covered by the Form N-PX. As the Form N-PX covers the period running from July 1 to June 30 of each year, adopting such a policy (and disclosing the policy in the investment manager’s Form ADV) will not impact the requirement to file the more detailed Form N-PX with respect to any period containing dates prior to the implementation of the policy (which would likely include the year in which the policy was adopted). Adopting such a policy would, however, permit the investment manager to file the notice filing in subsequent years. Investment managers without existing no-vote policies who wish to implement such policies may want to adopt and disclose them in their upcoming Form ADV annual updates. This will ensure that, if they do not vote during the relevant period, they will be eligible for notice filings by Summer 2026.

- **Institutional Manager Voting Report:** If the institutional investment manager filer is not eligible to file on the Notice Report, and none of the manager’s reportable securities are reported by another institutional manager or managers or one or more funds, then a detailed filing is required with a “Cover Page”, the “Summary Page,” and the “Proxy Voting Information” (e.g., a schedule that includes information about each say-on-pay vote).
- **Institutional Manager Combination Report:** If institutional investment managers that are required to report proxy votes and only a portion of those reportable votes are reported by another institutional manager or managers or one or more funds then such managers must submit the “Cover Page” listing the “List of Other Persons Reporting for this Manager” and include both the “Summary Page” and the “Proxy Voting Information”.
- **Fund Voting Report:** For a report by a fund, if the fund held one or more securities it was entitled to vote, check the box for report type “Fund Voting Report,” omit from the “Cover Page” the “List of Other Persons Reporting for this Manager”, and include both the “Summary Page” and the “Proxy Voting Information.” For a report by a fund, if the fund did not hold any securities it was entitled to vote and therefore does not have any proxy votes to report, check the box for report type “Fund Notice Report” and file the “Cover Page”, required signature, and, if applicable, the “Summary Page” information about the series.

As we have in the past, we will continue to monitor these issues and will provide future client updates. This publication is for guidance only and is not intended to be a substitute for specific legal advice. Please do not hesitate to reach out to your Troutman Pepper Locke attorneys with any questions.

[1] Reportable “say-on-pay” matters include (i) votes on executive compensation, (ii) votes on the frequency of executive compensation votes, and (iii) votes on compensation tied to mergers or acquisitions, such as “golden parachute” payments.

[2] An institutional investment manager is not required to file a report on Form N-PX for the 12-month period ending June 30 of the calendar year in which the manager’s initial filing on Form 13F is due (e.g., the quarterly filing on Form 13F if no filing on Form 13F was required for the immediately preceding calendar quarter).

[3] Note that it is possible for multiple parties to have and exercise voting power over the same securities.

[4] As per the final adopting release for Form N-PX and related amendments to Exchange Act Rule 14Ad-1, “A manager exercises voting power when it votes (or directs another party to vote) in accordance with the manager’s own guidelines or based on the manager’s own judgment, including exercising independent judgment or expertise to determine how a client’s voting policies should apply to a say-on-pay vote. A manager also exercises voting power when it influences the decision of whether to vote a security, such as by determining not to vote on a say-on-pay matter or whether to recall loaned securities in advance of a vote in order to vote the shares.”

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