December 2022

Monthly Version

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NEW RULES

SEC Adopts Enhanced Proxy Voting Reporting Requirements for Funds and Managers

On November 2, 2022, the SEC adopted amendments to Form N-PX that expand the information that registered funds must disclose about their proxy votes. The amendments also impose Form N-PX reporting requirements on institutional investment managers subject to reporting requirements under Section 13(f) of the Securities Exchange Act of 1934 with respect to those managers' votes on say-on-pay proposals of securities over which those managers exercise voting power. The amendments are intended to provide more usable and uniform voting records that investors and third-party research firms can more easily access and analyze.

The amendments to the SEC's Form N-PX reporting requirements include:

Standardized language, reporting format and website availability of information. The amendments will require reporting persons to describe voting matters on Form N-PX using the same language and presenting items in the same order as on the form of proxy prepared pursuant to Rule 14a-4 under the Exchange Act. For voting matters for which a form of proxy is not required under Rule 14a-4, reporting persons must provide a "brief identification of the matter voted on." Funds must also categorize voting matters on Form N-PX by type, disclose voting information separately by series, prepare and file Forms N-PX using a custom XML structured data language and make voting records publicly available free of charge on or through their websites and upon request.

Quantitative disclosures, including for securities on loan. The amendments will require funds to disclose the number of shares that were voted (or if not known, that were instructed to be cast) and how those shares were voted (e.g., for, against or abstain), as well as the number of shares that were loaned and not recalled for the vote. Funds are currently required to report information for each matter considered at a shareholder meeting with respect to which a portfolio security held by the fund is "entitled to vote." The amendments provide that portfolio securities on loan as of the record date for a shareholder meeting are securities "entitled to vote" at the meeting. This change is designed to ensure transparency on how a fund's securities lending activity may affect its proxy voting practices.

Say-on-pay reporting on Form N-PX for institutional investment managers. New Rule 14Ad-1 under the Exchange Act subjects each person that is (1) an institutional investment manager as defined in the Exchange Act and (2) required to file reports under Section 13(f) of the Exchange Act to an annual Form N-PX reporting requirement with respect to say-on-pay votes if the manager exercises voting power over the applicable securities. The rule adopts a two-part test for determining whether a vote must be reported, requiring both the power to vote a security (including the power to direct another party to vote the security) and the actual use of such power to influence the voting decision. To the extent an institutional investment manager does not exercise voting power over any securities that held say-on-pay votes during a given reporting period and has a disclosed policy of not voting proxies, the manager would file a report on Form N-PX affirmatively stating that fact. Lastly, the rule permits joint reporting of say-on-pay votes to avoid duplicative reporting subject to certain conditions.

The amendments will become effective on July 1, 2024, meaning that managers and funds will file their first reports on amended Form N-PX on or before August 31, 2024, with such reports covering voting activity during the period from July 1, 2023 to June 30, 2024.

The SEC's adopting release is available here, a related fact sheet is available here, and a related press release is available here.

PROPOSED RULES

SEC Proposes Significant Liquidity Risk Management and Swing Pricing Reforms

On November 2, 2022, the SEC voted to propose amendments to rules regarding liquidity risk management programs and swing pricing for open-end funds. The proposed amendments have significant operational, investment and compliance implications for open-end funds, including, among other things, a requirement that any open-end fund, other than a money market fund or ETF, use swing pricing to adjust the fund's net asset value (NAV) per share to pass on costs stemming from shareholder purchase or redemption activity to the shareholders engaged in that activity. Notably, to help operationalize the proposed swing pricing requirement, the SEC is proposing a "hard close" requirement for these funds—meaning an order to purchase or redeem a fund's shares would be executed at the current day's price only if the fund, its designated transfer agent or a registered securities clearing agency receives the order before the pricing time as of which the fund calculates its NAV.

Highlights from the SEC's proposal include:

Amendments to Funds' Liquidity Risk Management Programs

- *Imposition of More Prescriptive Standards for Liquidity Classifications and More Frequent Classification Reviews; Elimination of Classification by Asset Class.* Rule 22e-4 under the Investment Company Act of 1940 currently requires a fund to classify each portfolio investment based on the number of days within which it reasonably expects the investment would be convertible to cash, sold or disposed of, without significantly changing its market value. Funds may generally classify investments by asset class, using one of four liquidity classifications—highly liquid, moderately liquid, less liquid and illiquid—with reviews of such classifications required at least monthly in connection with related reporting on Form N-PORT, and more frequently if changes in relevant market, trading and investment-specific considerations are reasonably expected to materially affect one or more of a fund's classifications.

  The SEC's proposed amendments would significantly curtail the discretion funds exercise in determining the classification of investments. Specifically, the SEC proposes to provide objective minimum standards that funds would use to classify investments, including by (1) requiring funds to assume the sale of a set stressed trade size, rather than the rule's current approach of assuming the sale of a reasonably anticipated trade size in current market conditions; and (2) defining the value impact standard with more specificity as to when a sale or disposition would significantly change the market value of an investment. Additionally, the SEC proposes to require daily liquidity classifications and to remove classification by asset class.

- *Removal of "Less Liquid" Category and Treatment of Such Investments as "Illiquid"; Amended Definition of Illiquid Investment.* Currently, the "less liquid" category consists of investments that can be sold in seven calendar days but that take longer to settle, such as with respect to many bank loans. The SEC proposes to remove the "less liquid" investment category and to treat these investments as "illiquid"—a change the SEC asserts would "reduce the mismatch" between the timing of receipt of cash proceeds from settlement with the payment of shareholder redemptions. The SEC also notes that the current treatment of these investments as "less liquid"—as opposed to "illiquid"—enables funds to invest in such assets beyond the 15% limit on illiquid investments. As to illiquid investments, the SEC proposes to amend the definition to include investments whose fair value is measured using an unobservable input that is significant to the overall measurement. The SEC's proposing release acknowledges that the foregoing changes would primarily affect open-end funds that hold bank loan interests and may affect the availability of bank loan funds in open-end investment vehicles.

- *Amendments to Highly Liquid Investment Minimums.* The SEC proposes to amend the highly liquid investment minimum provisions in Rule 22e-4 to require all funds to determine and maintain a minimum amount of highly liquid assets of at least 10% of net assets.

- *Amendments to Calculation of Limit on Illiquid Investments.* The SEC proposes to require that funds take into account the value of assets that are posted as margin or collateral for certain derivatives transactions when calculating the 15% limit on illiquid investments.

Proposed Swing Pricing Requirement

Under the SEC's proposal, every open-end fund other than a money market fund and ETF would be required to establish and implement swing pricing policies and

procedures that adjust the fund's current NAV per share by a "swing factor" either if the fund has net redemptions or if it has net purchases of more than 2% of the fund's net assets.

A swing pricing administrator would be required to review investor flow information to determine (1) if the fund experiences net purchases or net redemptions; and (2) the amount of net purchases or net redemptions. In determining the swing factor, the proposed rule would require a fund's swing pricing administrator to make good-faith estimates, supported by data, of the costs the fund would incur if it purchased or sold a pro rata amount of each investment in its portfolio to satisfy the amount of net purchases or net redemptions—referred to as "a vertical slice."

Additionally, under the proposal, the fund's board of directors would be required to (1) approve the fund's swing pricing policies and procedures; (2) designate the fund's swing pricing administrator; and (3) review, no less frequently than annually, a written report prepared by the swing pricing administrator.

Proposed Hard Close

While acknowledging the "costs to change business practices, operations, and computer systems, including integration of new technologies," the SEC proposes to amend Rule 22c-1 under the 1940 Act to require a "hard close" for funds subject to the proposed swing pricing requirement. The hard close would provide that a request to redeem or purchase a fund's shares may be executed at the current day's price only if the fund, its designated transfer agent or a registered securities clearing agency receives the eligible order before the pricing time as of which the fund calculates its NAV. Orders received after the fund's established pricing time would receive the next day's price.

Amended Reporting Requirements

The proposed amendments would require more frequent reporting of monthly portfolio holdings and related information to the SEC and make other amendments to require additional information about funds' liquidity risk management and use of swing pricing.

- *Form N-PORT.* The SEC proposes to require all registered investment companies that report on the form—which include open-end funds (other than money market funds), registered closed-end funds and ETFs registered as unit investment trusts—to file monthly reports with the SEC within 30 days of month-end, which subsequently would be publicly available 60 days after month-end. Currently, funds file these reports on a quarterly basis with a 60-day delay, and the public only has access to information for the third month of each quarter. As proposed, funds subject to the liquidity rule classification requirements would also be required to provide information regarding the aggregate percentage of its portfolio represented in each of the three proposed liquidity categories, which would be publicly available.

- *Form N-1A.* As proposed, funds would be required to disclose that orders placed with a financial intermediary may require the investor to submit its order earlier to receive the fund's next calculated NAV.

The SEC's press release regarding the proposed amendments is available here; an accompanying fact sheet is available here. The SEC's proposing release is available here. The public comment period will remain open for 60 days after publication of the proposing release in the Federal Register.

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