

Compliance Reminder: August 31 Deadline for Form 13F Filers to File Form N-PX

August 1, 2024

Summary of the Rule

In November 2022, the U.S. Securities and Exchange Commission (“SEC” or “Commission”) adopted amendments to Form N-PX, which previously only applied to management investment companies registered under the Investment Company Act of 1940, as amended (“funds”), and adopted the new Rule 14Ad-1 under the Securities Exchange Act of 1934 (“Exchange Act”).¹ Under new Rule 14Ad-1, an “institutional investment manager”² that is required to file reports under Section 13(f) (“manager”) must file the manager’s proxy voting record regarding votes pursuant to Section 14A(a) and (b) of the Exchange Act on certain executive compensation (“say on pay”) matters.³ As a result, every manager must report the following three types of say on pay votes with respect to each security over which the manager exercised voting power:

- votes on approval of executive compensation;
- votes on the frequency of such executive compensation approval votes; and
- votes to approve “golden parachute” compensation in connection with mergers or acquisitions.⁴

Managers are required to file reports on Form N-PX annually, no later than August 31 of each year, for the most recent 12-month period ended June 30.⁵ Because August 31,

¹ See Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Exch. Act Rel. No. 96206 (Nov. 2, 2022), <https://www.sec.gov/rules/final/2022/33-11131.pdf> (the “Say on Pay Adopting Release”).

² 15 U.S.C. § 78m(f)(6). See definition of “institutional investment manager,” as defined in Section 13(f)(6)(A) of the Exchange Act.

³ See Say on Pay Adopting Release, at 12.

⁴ *Id.* The types of say on pay votes that managers must report are the same as the types of shareholder advisory votes required by Section 14A of the Exchange Act. *Id.*

⁵ General Instruction A to amended Form N-PX.

2024 is a Saturday, managers have until September 3, 2024 (the next business day) to file their first reports on the amended Form N-PX.⁶ This initial filing must cover the reporting period of July 1, 2023 to June 30, 2024.

Managers' Reporting Obligations

Definition of "Manager" and "Voting Power"

For purposes of 13(f) reporting, an institutional investment manager includes "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."⁷ This section is not limited to SEC-registered investment advisers but can include, for example, insurance companies and foreign managers not required to register as investment advisers.

Institutional investment managers that exercise "investment discretion" over accounts that in the aggregate hold \$100 million or more in certain equity securities must file quarterly reports on Form 13F disclosing the holdings of the accounts over which they have investment discretion.⁸

A manager must report on Form N-PX if the manager: (i) has the power to vote, or direct the voting of, a security and (ii) "exercises" this power to vote or influence a voting decision for the security.⁹ Managers exercise voting power when they vote or influence a vote using their own independent judgment.¹⁰ As an example, 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.¹¹ 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 to vote

⁶ Under Rule 0-3 of the Exchange Act, when the due date of a report falls on a Saturday, Sunday or holiday, the report will be considered timely filed on the first business day following the due date.

⁷ Exchange Act § 13(f)(6)(A).

⁸ Exchange Act § 13(f), 15 U.S.C. § 78m(f). The definition of "investment discretion" is set forth in Section 3(a)(35) of the Exchange Act.

⁹ See Say on Pay Adopting Release, at 14. Rule 14Ad-1(d)(1) defines "voting power" to mean "the ability, through any contract, arrangement, understanding, or relationship, to vote a security or direct the voting of a security, including the ability to determine whether to vote a security or to recall a loaned security." Rule 14Ad-1(d)(2) defines "exercise" of voting power to mean "using voting power to influence a voting decision with respect to a security."

¹⁰ See Say on Pay Adopting Release, at 15. The SEC stated that the reporting framework focuses on the exercise, and not mere possession, of voting power. *Id.*

¹¹ See Say on Pay Adopting Release, at 15.

the shares.¹² A manager is not required to vote on say on pay matters if the voting decisions are entirely determined by its client or another party.¹³

For a manager that did not exercise voting power over any say on pay votes during a reporting period, the manager will still be required to file Form N-PX to indicate that they did not exercise voting power over any say on pay votes during the reporting period.¹⁴

Joint Reporting

Two or more managers may file Form N-PX jointly in a manner similar to how joint reporting is disclosed on Form 13F. A manager may report say on pay votes where multiple managers exercise voting power over the same securities pursuant to Section 14A(a) or (b) of the Exchange Act.¹⁵ Two or more managers that are affiliated persons may file a joint report on a single Form N-PX even if they do not exercise voting power over the same securities.¹⁶ In addition, a fund may report its say on pay votes on behalf of a manager that exercises voting power over some or all of the fund's securities.¹⁷

In all cases, joint reporting is optional. The reporting manager must identify the other manager(s) on whose behalf it is reporting and the securities over which each of the non-reporting managers exercises voting power. The other managers would file Form N-PX and identify the manager(s) or fund(s) that reported on their behalf.

Confidential Treatment

The information reported on Form N-PX is generally publicly available. Managers can request confidential treatment in a manner similar to how a manager would request confidential treatment of information reported on Form 13F.¹⁸ The SEC will apply the same standard in determining whether to approve a confidential treatment request in relation to Form N-PX as it does for Form 13F.¹⁹ For example, the SEC will not approve requests for confidential treatment where a manager has a confidentiality agreement

¹² *Id.*

¹³ For a discussion of examples where a manager does or does not exercise voting power, *see* Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Investment Managers; Investment Company Act Release No. 34389 (Sept. 29, 2021) [86 FR 57478 (Oct. 15, 2021)] (“Proposing Release”) at section II.B.2.

¹⁴ *See* Say on Pay Adopting Release, at 78.

¹⁵ General Instruction C.1. to amended Form N-PX.

¹⁶ General Instruction C.2. to amended Form N-PX. The definition of “affiliated persons” can be found in Section 2(a)(3) of the Investment Company Act.

¹⁷ General Instruction C.3. to amended Form N-PX.

¹⁸ Instructions for Confidential Treatment Requests to amended Form N-PX.

¹⁹ *See* 15 U.S.C. 78m(f)(4) and (5) and rule 24b-2; *see also* Request for Confidential Treatment Instruction 4 to amended Form N-PX.

with a client regarding disclosure of portfolio information because it would not meet the standards for confidential treatment in connection with Form 13F.²⁰ Furthermore, with regard to the “say on pay” votes, the SEC has cautioned that confidential treatment would only be granted in narrowly tailored circumstances, such as when a confidential treatment request is pending or approved for the same information on the Form 13F.²¹

Compliance Dates

1. Timing of Filing

Managers are required to file reports on Form N-PX annually, no later than August 31 of each year, for the most recent 12-month period ended June 30.²² Because August 31, 2024 is a Saturday, managers have until September 3, 2024 to file their first reports on Form N-PX, which must cover the reporting period of July 1, 2023 to June 30, 2024.

2. Transition Rules for Managers

Transition rules govern the timing of a manager’s Form N-PX reporting obligations when the manager’s obligation to file Form 13F reports is initially incurred or ceases. For example, Rule 14Ad-1 does not require managers to file a Form N-PX report for the 12-month period ending June 30 of the calendar year in which the manager’s initial filing on Form 13F is due.²³ Instead, managers will be required to file a report on Form N-PX for the period ending June 30 for the calendar year following the manager’s initial filing on Form 13F.²⁴ The following chart illustrates the timing of a manager’s obligation to make an initial Form N-PX filing.²⁵

Date Manager Exceeds Reporting Threshold	First Form 13F Filing Due	First Proxy Reporting Period	First Form N-PX Due
Mar. 31, 2023	Feb. 15, 2024	July 1, 2024 — June 30, 2025	Aug. 31, 2025
Dec. 31, 2023	Feb. 15, 2024	July 1, 2024 — June 30, 2025	Aug. 31, 2025
Jan. 31, 2024	Feb. 15, 2025	July 1, 2025 — June 30, 2026	Aug. 31, 2026

²⁰ See Say on Pay Adopting Release, at 70.

²¹ Say on Pay Adopting Release, at 70.

²² General Instruction A to amended Form N-PX.

²³ Rule 14Ad-1(b); General Instruction F to amended Form N-PX. For this purpose, an “initial filing” on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F was required for the immediately preceding calendar quarter. *Id.*

²⁴ Say on Pay Adopting Release, at 73.

²⁵ *Id.*

In addition, no Form N-PX filing is required with respect to any shareholder vote at a meeting that occurs after September 30 of the calendar year in which the manager's final filing on Form 13F is due. Instead, the manager would file its report on Form N-PX for the period July 1 through September 30 of the calendar year in which its final filing on Form 13F is due.²⁶ This short-period Form N-PX filing would be due no later than March 1 of the immediately following calendar year, when the manager's Form 13F filing status will be conclusively determined for the coming year.²⁷ The following chart illustrates the timing of a manager's obligation to make a final Form N-PX filing.²⁸

Date Manager Ceases to Meet Threshold	Final Form 13F Filing Due	Final Proxy Reporting Period	Final Form N-PX Due
Mar. 30, 2023	Nov. 14, 2024	July 1, 2024 – Sept. 30, 2024	Mar. 1, 2025
Dec. 30, 2023	Nov. 14, 2024	July 1, 2024 – Sept. 30, 2024	Mar. 1, 2025
Feb. 1, 2024	Nov. 14, 2025	July 1, 2025 – Sept. 30, 2025	Mar. 1, 2026

Implications for Managers

Managers should keep in mind that they can provide simplified Form N-PX disclosure by only filing the Cover Page and the required signature under the following scenarios:

- all say on pay proxy votes are reported by other reporting persons;
- the manager did not exercise voting power for any reportable voting matter and therefore does not have any proxy votes to report; or

²⁶ General Instruction F to amended Form N-PX.

²⁷ Say on Pay Adopting Release, at 75; Rule 14Ad-1(c); General Instruction F to amended Form N-PX. For this purpose, a “final filing” on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F is required for the immediately subsequent calendar quarter. *Id.* A manager is required to file a report on Form 13F in the coming year if it meets the \$100 million threshold on the last trading day of any month of the current calendar year. As a result, in cases where the manager does not meet the threshold in January through November, its status will not be determined until December 31. *Id.*

²⁸ Say on Pay Adopting Release, at 75.

- the manager has clearly disclosed the policy of not voting, and actually did not vote, on any say on pay proxy voting matters.²⁹

Managers should take actions now to align their proxy voting practices with Form N-PX reporting requirements, including the following:

- keep complete and accurate record of all required information under Form N-PX for every say on pay vote occurring on or after July 1, 2023;
- if an SEC proxy card is available for the matter to be voted on (i.e., if the matter is subject to Rule 14a-4 under the Exchange Act), a manager must use the same language and the same order of disclosure in the Form N-PX as on the issuer’s proxy card;³⁰
- track the shares voted and shares loaned before the record dates for each of the manager’s proxy votes; and
- managers that do not vote their shares and have no clearly disclosed policy on not voting should keep in mind that they now must report their abstention from voting.

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Please do not hesitate to contact us with any questions.



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²⁹ See Special Instruction B.2.d. to amended Form N-PX.

³⁰ See Special Instruction D.3 to amended Form N-PX.



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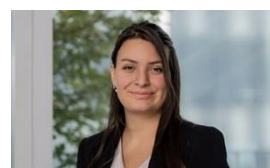
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