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CLIENT ALERT: Form N-PX – What Private Fund Investment Advisers Need to Know

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On November 2, 2022, the Securities and Exchange Commission (the "SEC") voted along party lines to adopt a final rule and certain amendments, creating the new Rule 14Ad-1 under the Securities Exchange Act of 1934 (the "Exchange Act") and new disclosure requirements under Form N-PX (collectively, the "2022 Amendments"). Form N-PX and Rule 14Ad-1will extend disclosure filing requirements to include disclosure of votes cast by certain private institutional investment managers on issues including say-on-pay, say-on-frequency, and golden parachute votes. The effective date of this rule is July 1, 2024, and thus will impact initial Form N-PX filings due August 31, 2024.

What is Form N-PX?

Form N-PX is a form issued by the SEC for the purpose of annual reporting of proxy voting records of registered investment companies, other than small business investment companies registered on Form N-5. Since 2003, Form N-PX has required certain registered funds to file annual reports on proxy voting records. The 2022 Amendments to Form N-PX have expanded some of the filing requirements previously applicable only to registered funds, to all fund managers who file Form 13F, which may include private fund advisers.

Will I have to file as a private fund adviser?

The Amendments to Form N-PX and its related rules cover all institutional investment managers that are required to file Form 13F with the SEC. For purposes of this analysis, the SEC considers an "institutional investment manager" to be any person (other than a natural person) who invests in, buys or sells securities for its own account, as well as any person exercising investment discretion with respect to the account of another person.

Under Section 13(f) of the Securities Exchange Act of 1934 (the "Exchange Act"), an institutional investment manager who exercises investment discretion of over $100 million or more in Section 13(f) securities must file Form 13F to report their ownership of such securities.



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Under the 2022 Amendments, any private fund manager who is required to file Form 13F must file Form N-PX.

What are my new filing obligations?

1. **Say-on-Pay Voting.** Managers subject to 13F filing requirements must report annually on Form N-PX each say-on-pay vote over which they exercised voting power during the most recent prior year. This requires disclosure of votes on compensation paid to the company's named executive officers. Joint reporting of say-on-pay votes by managers, or by managers and funds are permissible to avoid duplicative reporting.
2. **Say-on-Frequency Voting.** Managers subject to 13F filing requirements must report stockholder votes on the frequency of say-on pay votes (referred to as "say-on-frequency" votes).
3. **Votes on Golden Parachute Arrangements.** Managers subject to 13F filing requirements must disclose where stockholders vote on the compensation payable to a company's named executive officers due to a change-in-control event, such as a merger or acquisition.
4. **Categorizing Voting Matters.** Affected funds must categorize the votes reported on Form N-PX consistent with a list including but not limited to: votes for director elections, extraordinary transactions, say-on-pay and shareholder rights and defenses.
5. **Individual N-PX Disclosures.** Filers who own multiple series of shares must provide each series' Form N-PX disclosure independently based on its series.

How do I make these disclosures?

Qualifying 13F filers will be required to make their disclosures on an issuer-by-issuer basis. Additionally, they will need to disclose:

- The number of shares voted;
- How the shares were voted on pay-related proposals; and
- Whether votes were cast in more than one manner for a company, and how many votes were cast in each manner.

When should I file Form N-PX?

Form N-PX reports will be due on August 31 annually. The reporting must cover the most recent prior year period, running from July 1 until June 30. For institutional investors impacted by the 2022 Amendments, filings will be due on August 31, 2024, and shall cover July 1, 2023 until June 30, 2024.

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For 13F filers who filed in 2024, but not in 2023, the SEC has provided that such fund managers are not required to file Form N-PX until 2025.

For more personalized information on the way these new amendments to Form N-PX and the Exchange Act may affect you as an investment adviser, please feel free to contact us.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Diana Alsabe.

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