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November 18, 2010

Ms. Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Reporting of Proxy Votes on Executive Compensation and Other Matters
(File No. S7-30-10)

Dear Ms. Murphy:

The Investment Company Institute¹ appreciates the opportunity to comment on the Securities and Exchange Commission's proposed rule and form amendments to facilitate the disclosure of certain shareholder advisory votes on executive compensation.² The public disclosure of these advisory votes by institutional investment managers, as required by Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is a step in the right direction. We strongly support the purpose and intent of this provision, and indeed believe that the SEC should require all institutional investors to disclose every proxy vote they cast, as funds currently do.³

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, public promote understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.05 trillion and serve over 90 million shareholders.

² *Reporting of Proxy Votes on Executive Compensation and Other Matters*, Release No. 34-63123 (Oct. 18, 2010) (the "Release"), available at <http://www.sec.gov/rules/proposed/2010/34-63123.pdf>. Some of the issues raised in this Release, such as the desirability of data tagging proxy vote disclosure, were also raised in the SEC's concept release earlier this year. See *Concept Release on the U.S. Proxy System*, SEC Release No. 34-62495 (July 14, 2010) ("Proxy Concept Release"). We reiterate our earlier comments that the SEC should not impose data tagging requirements on proxy statement or voting information forms unless it can establish that expected benefits to investors would justify the associated costs. See letter from Karrie McMillan, General Counsel, ICI, to Elizabeth M. Murphy, Secretary, SEC, dated Oct. 20, 2010 ("ICI Proxy Concept Release Letter").

³ We supported the proxy vote disclosure provision in Section 951 during the legislative process. Indeed, we have consistently and strongly supported requiring institutional investors to disclose every proxy vote they cast. See Statement of the Investment Company Institute on "Corporate Governance and Shareholder Empowerment" before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services, United States House of Representatives (April 21, 2010), available at http://www.ici.org/policy/ici_testimony/10_house_corp_gov_tmny. See also ICI Proxy Concept Release Letter.

For reasons explained below, however, we are opposed to certain aspects of the proposal. Specifically, we oppose expanding the types of disclosure that funds are required to provide on Form N-PX to include the precise number of shares they were entitled to vote and the precise number of shares that were actually voted. This data is not required by Section 951, would be difficult to compile (and in fact, may be impossible to produce with the degree of precision required), is of no value to most fund investors, and is generally unnecessary to achieve the purposes of proxy vote disclosure.

Discussion

This proposal implements Section 14A(d)⁴ of the Securities Exchange Act of 1934 (the “Exchange Act”), which requires certain institutional investment managers to annually report how they voted on three new types of shareholder advisory votes: say on pay votes; say on frequency votes; and golden parachute votes (collectively, the “Section 14A Votes”).⁵ To avoid duplicative reporting, Section 14A(d) has an express exception for votes otherwise required to be reported publicly by SEC rule or regulation.

Funds fit cleanly within this exception, because they are required to disclose each and every proxy vote, and would have had to disclose Section 14A Votes regardless of whether Section 14A(d) was added to the Exchange Act.⁶ This fact suggests that the purpose of Section 14A(d) is very clear – it is intended to extend proxy vote disclosure to institutional investors other than funds. The statute does not make proxy vote disclosure any more burdensome for funds, and the express exception strongly suggests that it was not intended to do so.

By proposing to fundamentally alter the type of information funds are required to include on Form N-PX, the SEC has gone beyond the mandate in Section 951 and needlessly complicated this rulemaking. Funds are currently required to disclose, among other things, whether and how they cast their vote. The proposal would greatly expand this obligation by requiring funds to disclose the precise number of shares they were entitled to vote and the precise number of shares that were actually voted.⁷ Funds alone would be required to provide this information on each and every proxy vote they cast. Other institutional investors would be required to provide it only with respect to Section 14A votes.

We believe the SEC seriously underestimates the practical difficulties in providing this

⁴ Section 14A(d) was added by Section 951 of the Dodd-Frank Act.

⁵ “Say on pay” votes are shareholder advisory votes to approve the compensation of executives, as disclosed pursuant to Item 402 of Regulation S-K. “Say on frequency” votes are shareholder advisory votes to determine how often an issuer will conduct a say on pay vote. “Golden parachute” votes are shareholder advisory votes on certain compensation arrangements in connection with a merger or similar transaction.

⁶ See Rule 30b1-4 under the Investment Company Act.

⁷ Proposed items 1(g) and 1(h) of Form N-PX.

information. The new disclosure obligations would entail two additional fields of precise numerical information on Form N-PX, requiring the types of quality assurance checks and reconciliations that go along with any numerical disclosure. As noted above, for funds, this information would be included not just with Section 14A Votes, but with each and every vote. So the additional volume of numerical disclosure would equate to two times the number of proposals that funds deal with each year, which can easily range into the thousands.⁸ The SEC's cost-benefit analysis suggests that all of that could be done for \$405 per fund, comprised entirely of 1.5 hours of review by a single compliance attorney. We believe the actual costs would be far greater, not only because of the sheer volume of data involved, but also because there are numerous activities other than a compliance attorney's review involved in the preparation, filing, and recordkeeping for Form N-PX.

Moreover, funds simply may not be able to provide the disclosure with the degree of precision required. Although funds could provide information on the number of votes *instructed to be cast*, funds (and institutional investment managers) would not be able to determine the exact number of shares actually voted. As the SEC is aware, issuers do not provide confirmation of how shareholder's proxies were voted or the number of the shareholder's shares counted toward the vote, and vote confirmation is further complicated by omnibus custodian accounts, DTC over-voting issues, and the presence of two or more layers (proxy vendors, tabulators, and custodian/sub-custodian banks) between the shareholder and the corporate secretary responsible for counting the votes.⁹ In the absence of any reliable way to confirm votes, the fund or manager has no way to ensure that the votes were cast as instructed.

The SEC's primary justification for the new requirement is that the number of shares entitled to vote and the number of votes cast are necessary to accommodate the possibility of split votes (*i.e.*, when an institutional investment manager votes for a matter on behalf of one client, and against the same matter on behalf of a different client). We agree that simply reporting "split" does not provide much meaningful information about the way the reporting entity voted, and additional information may be useful to put the split vote in context.

With respect to funds, the Release justifies the additional reporting by further suggesting that the number of shares entitled to vote and the number of votes cast are necessary to complete the disclosures made by other institutional managers and to benefit shareholders.¹⁰ Neither reason is persuasive. To the extent that another institutional manager's disclosures are rendered "incomplete" by

⁸ For example, in discussing this proposal with ICI members, one large fund complex suggested that it had more than 30,000 pages of Form N-PX disclosure in 2010, because the funds in the complex invested in nearly 9,000 portfolio companies.

⁹ See Section III of the Proxy Concept Release, entitled "Accuracy, Transparency, and Efficiency of the Voting Process."

¹⁰ See Release at 33 ("[U]nless we require funds to report this information, the record of institutional investment managers will be incomplete. In addition, information about the magnitude of a fund's voting power and the number of votes cast contribute to the transparency of proxy voting. For that reason, we are also proposing to extend the new requirements to the complete proxy voting records of funds. This is intended to improve transparency of fund proxy voting records and enable fund shareholders to better monitor their funds' involvement in the governance activities of portfolio companies.")

a split vote, the obvious cure is to require *that* institutional manager to make additional disclosure, not to impose a new burden on *all* funds. And we seriously question the benefits of this disclosure for fund investors. Although occasionally an investor may be interested in knowing whether a fund voted in favor of or against a particular issue, the precise number of votes cast is likely to be of interest mainly to academics studying proxy issues, vendors seeking to profit from packaging the data, and competitors looking for information about fund holdings. We also are concerned that investors could be confused or misled by disclosure that shows a difference between the number of votes entitled to be cast and the number of votes actually cast. Any such difference might imply that a fund abdicated its voting responsibilities, even though there are good reasons why funds do not always vote all of their securities.¹¹

For all of these reasons, we strongly oppose expanding the types of disclosure that funds are required to provide on Form N-PX to include the precise number of shares entitled to vote and number of votes cast. To the extent that, despite our opposition, the SEC moves forward with this part of the proposal, we urge it to limit the requirement to disclose the number of votes to instances where there is a split vote on a Section 14A Vote. And in those instances, for reasons discussed above, the required disclosure should relate to the number of votes instructed to be cast. This would remain consistent with Section 951's mandate to address Section 14A Votes, achieve the SEC's goal of providing more detail on split votes, and minimize compliance burdens and needless expenses in the many cases where it is clear how a reporting entity voted.¹²

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¹¹ For example, proxy voting in certain countries requires "share blocking," meaning that shareholders wishing to vote their proxies must deposit their shares before the date of the meeting with a designated depository. Shares that will be voted cannot be sold until the meeting has taken place and the shares are returned to the shareholder's custodian bank. A fund might conclude that the benefits of voting in such a case are outweighed by the cost (*i.e.*, the lost liquidity in the shares).

¹² As noted above, if the SEC ultimately adopts the specific numerical disclosure as proposed, funds would require additional time to produce the data, reprogram systems, and prepare the filings. Given that this numerical information is unnecessary for compliance with Section 14A(d), the SEC should delay this particular requirement for a year to give funds and their proxy voting service providers sufficient time to implement the processes necessary to be able to produce and report the data.

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If you have any questions or need additional information, please contact me at (202) 326-5815 or Bob Grohowski at (202) 371-5430.

Sincerely,

/s/

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General Counsel

cc: Andrew J. Donohue, Director
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U.S. Securities and Exchange Commission