

## Proposed Institutional Investment Manager Reporting on Proxy Votes

On October 18, 2010, the Securities and Exchange Commission (“SEC”) proposed new Rule 14Ad-1 (the “Proposed Rule”) under the Securities Exchange Act of 1934 (the “Exchange Act”), as required by Section 951 of the “Dodd-Frank Wall Street Reform and Consumer Protection Act” (“Dodd-Frank”). If adopted as proposed, the Proposed Rule would require certain institutional investment managers, including hedge fund managers and pension fund managers that are required to file Form 13F, to annually file their record of proxy voting with respect to executive compensation shareholder votes. A copy of the SEC’s Proposing Release is available [here](#).

### Background

Section 951 of Dodd-Frank added a new Section 14A to the Exchange Act, requiring (a) issuers to provide shareholders with a vote on certain executive compensation matters and (b) institutional investment managers subject to Exchange Act Section 13(f) to report on how they voted on those matters. The SEC was left to determine the details of the reporting requirements. The Proposed Rule is the first step in this process and, following a comment period, the SEC will adopt final rules, which may differ from the proposals in the Proposed Rule. For additional information on the

impact of Dodd-Frank on investment advisers, please see our memorandum [Dodd-Frank Act Impacts Private Fund Advisers](#).

### Scope of the Proposed Rule

The Proposed Rule requires institutional investment managers that are required to file reports under Section 13(f) of the Exchange Act to report annually on Form N-PX their shareholder votes on certain executive compensation matters pursuant to Sections 14A(a) and (b) under the Exchange Act (“Section 14A Votes”).

→ **Institutions that must file reports:** The Proposed Rule requires filings by institutional investment managers that are required to file reports on Form 13F under Section 13(f). Section 13(f) requires quarterly reporting of securities positions for Section 13(f) securities (generally equity securities traded on exchanges) by institutional investment managers that exercise investment discretion with respect to accounts holding Section 13(f) securities having an aggregate fair market value on the last trading day of any month of at least \$100 million. Many hedge fund managers and pension fund managers currently qualify as Form 13F filers and

would be required to file Form N-PX under the Proposed Rule. The Proposed Rule contemplates that where two managers share voting power, only one manager will be required to report the Section 14A Votes with respect to those securities.

- **Votes that must be reported:** Section 14A Votes include votes required by Section 14A(a) on the approval of executive compensation and on the frequency of executive compensation approval votes, as well as votes required by Section 14A(b) on the approval of executive compensation that relates to mergers and acquisitions. The Proposed Rule requires reporting of each Section 14A Vote with respect to which the manager, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, had or shared the power to vote, or direct the voting of, the security. The Proposed Rule requires only Section 14A Votes to be reported — other types of votes are not required to be reported by institutional investment managers.
- **Form N-PX:** Form N-PX currently is filed only by registered investment companies but under

the Proposed Rule would be expanded to cover Section 14A Votes by institutional investment managers. Form N-PX will be filed annually not later than August 31 of each year for the most recent 12-month period ended June 30. Since Form N-PX will continue to be filed by registered investment companies, proxy voting information for registered investment companies and institutional investment managers will be reported on the same timetable.

#### **Timetable**

The SEC currently plans to finalize and adopt final rules in the first quarter of 2011. The SEC's deadline for submitting comments on the Proposed Rule is November 18, 2010. If the rule is adopted as proposed, institutional

investment managers will need to file their first reports on Form N-PX not later than August 31, 2011 covering Section 14A Votes at shareholders meetings that occur between January 21, 2011 and June 30, 2011.

#### **Conclusion**

The SEC requested comments on a number of aspects of the Proposed Rule, and it is possible that the final rule may differ in material respects from the Proposed Rule. We can assist in evaluating these issues, preparing to address the new rules and drafting proposed comments to the SEC regarding the Proposed Rule.

#### **Additional Information**

The Hunton & Williams Private Investment Fund practice group

regularly represents funds, sponsors and a variety of investors in all types of private investment fund matters, including structuring, formation, offerings and compliance. We will continue to monitor the progress of the SEC's rulemaking to implement Dodd-Frank's requirements relating to investment advisers as well as relevant trends in private investment fund regulation.

For additional information on financial industry recovery proposals, see our related memoranda, available on [www.huntonfinancialindustryresourcecenter.com](http://www.huntonfinancialindustryresourcecenter.com). For additional information on recent legislation and regulations relating to regulation of private investment funds and their advisers, see our [prior memoranda](#) available on our website at [www.hunton.com](http://www.hunton.com).

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