

New SEC Requirements for Form 13F Filers Effective July 1, 2024

April 26, 2024

In late 2022, the Securities and Exchange Commission (SEC) adopted rule changes that will require institutional investment managers who file Form 13F to annually file a Form N-PX disclosing the manner in which they have voted on certain pay-related proposals held by the companies whose securities they hold.

In this alert, we summarize these requirements and provide practical takeaways for investors to consider when voting this proxy season and preparing their initial Form N-PX filings under the new requirements.

Background: Form 13F

Form 13F is a quarterly report that certain “institutional investment managers” must file if they exercise “investment discretion” with respect to accounts holding “Section 13(f) securities” (generally US publicly traded securities) having an aggregate value of at least \$100 million. Form 13F requires these institutional investment managers to report basic information about their holdings of Section 13(f) securities, including the name of the issuer, the class of security held, the number of shares owned, and the fair market value of the securities held, in each case as of the end of the most recently completed quarter. The determination of whether an investor is required to file reports on Form 13F can be complex and is beyond the scope of this alert.

What does new rule require of Form 13F filers?

The new rule implements a mandate from the Dodd-Frank Act and requires each Form 13F filer to publicly report on an annual basis on Form N-PX the manner in which it voted on all pay-related proposals, which are advisory proposals presented by most public companies to their stockholders for consideration at stockholder meetings. Below, we’ve outlined the three types of pay-related proposals covered by the new rule.

1. Advisory votes on executive compensation

Sometimes referred to as “say-on-pay” proposals, these allow stockholders to cast an advisory vote on the compensation paid to the company’s named executive officers. These votes generally are held annually at the company’s annual meeting of stockholders, but some companies hold them less frequently.

2. Advisory votes on frequency of executive compensation votes

Sometimes referred to as “say-on-frequency” proposals, these allow stockholders to cast an advisory vote on the frequency of say-on-pay votes. These proposals are required to be held at least once every six years and generally are held at the company’s annual meeting of stockholders.

3. Advisory votes on ‘golden parachute’ arrangements

Sometimes referred to as “say-on-parachute” proposals, these allow stockholders to cast an advisory vote on the compensation payable to a company’s named executive officers as a result of a change-in-control event (e.g., a merger or acquisition). These proposals generally only arise in connection with the vote on the change-in-control transaction.

Effective dates

The new requirements go into effect on July 1, 2024, and Form 13F filers will be required to file their first reports

on Form N-PX by **August 31, 2024**. The first report will cover all pay-related proposals presented at any stockholder meeting held between July 1, 2023, and June 30, 2024.

Form N-PX will require Form 13F filers to disclose, on an issuer-by-issuer basis, the number of shares voted, and how they were voted on the pay-related proposal(s) submitted to stockholders (e.g., for, against or abstain or, in the case of say-on-frequency proposals, every one, two or three years). If Form 13F filers cast votes in multiple manners for a particular company (e.g., both for and against a proposal), they should report how many shares they voted in each manner. It is important to note that there is no de minimis exemption to reporting the manner of voting, meaning that Form 13F filers will be required to report all pay-related proposal votes regardless of the number of shares of the issuer's stock they own or the fair market value of the shares. For Form 13F filers who engage in share lending, Form N-PX will require the Form 13F filer to report the number of shares they loaned out and did not recall for voting. For any Form 13F filers who have a disclosed policy of not voting proxies, and who did not in fact vote their shares during the relevant period, Form N-PX will include a designation box to indicate this fact.

Transition matters

Only Form 13F filers who filed Form 13F during 2023 and 2024 will be required to file Form N-PX by August 31, 2024. For institutional investment managers who have been subject to Form 13F filings only for a portion of the 2023 to 2024 time period, the SEC has provided transition guidance on the Form N-PX filing requirements, which we've outlined below.

Form 13F filers for 2024, but not 2023

Form 13F filers are not required to file a Form N-PX during the first calendar year in which their initial Form 13-F was required, so these Form 13F filers will not be required to file Form N-PX until 2025.

Form 13F filers in prior years, but not during 2024

These institutional investment managers are not required to file a Form N-PX this year, and they will not be required to file an initial Form 13F until the calendar year following their next required Form 13F filing.

Form 13F filers who cease filing Form 13F during 2024

Current Form 13F filers who do not trigger a filing obligation for 2025 – i.e., those who do not own an aggregate of \$100 million of Section 13(f) securities as of the end of any calendar month of 2024 – will be required to file a “stub period” Form N-PX next year. That filing will cover all pay-related proposals presented at stockholder meetings held between July 1, 2024, and September 30, 2024, and will be due on March 1, 2025.

What to do now

Form 13F filers should begin tracking the annual meeting dates of their public portfolio companies, including determining whether pay-related proposals will be, or have been, presented. Similarly, Form 13F filers should monitor and record the manner of voting on pay-related proposals for all their public companies during the period covered by this filing requirement. Finally, Form 13F filers should begin to aggregate this information for provision to outside counsel who can assist in preparing the Form N-PX by the filing deadline.

Practical considerations

It is important that institutional investment managers recognize that their voting decisions on pay-related proposals now will be made public. Executive compensation matters recently have been the focus of heavy public criticism, so, to the extent there are sensitivities to the institutional investment managers' voting practices on these matters, they should consider whether and how these new requirements may impact their voting decisions.

Additionally, public companies generally are very sensitive to the degree of stockholder support that they receive on say-on-pay proposals. Companies that receive below 80% support from stockholders on their say-on-

pay proposals often undertake an investor outreach program to engage with their largest stockholders to seek feedback on their executive compensation programs. Accordingly, Form 13F filers should be mindful of the possibility of receiving outreach from management of these companies – and be prepared to engage in these discussions, particularly when their ownership position is relatively large (e.g., greater than 1%).

More information on the new rule is available in the SEC's [November 2022 press release](#) and [fact sheet](#).

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