



INVESTMENT COMPANY INSTITUTE

CRAIG S. TYLE
GENERAL COUNSEL

March 13, 2003

Office of Management and Budget
Attention: Mr. Nathan Knuffman, Desk Officer for the
Securities and Exchange Commission
Office of Information and Regulatory Affairs
Room 3208
New Executive Office Building
Washington, D.C. 20503

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549-0609

RE: Proxy Voting by Investment Companies
File No. S7-36-02

Dear Mr. Knuffman and Mr. Katz:

The Investment Company Institute¹ appreciates the opportunity to comment on the Securities and Exchange Commission's Paperwork Reduction Act burden estimates with respect to Form N-PX on which mutual funds would be required to file their complete proxy voting records. This new form was adopted by the Commission as a part of a package of rules relating to proxy voting by investment companies and investment advisers.²

I. Background

On January 23, 2003, the Commission adopted rule and form amendments under the Investment Company Act of 1940 that impose new requirements on mutual funds with respect to proxy voting. The Institute supported most of the amendments, including (1) requiring investment advisers to funds to adopt written policies and procedures designed to ensure that proxies are voted in the interest of fund shareholders; (2) requiring those policies and

¹ The Investment Company Institute is the national association of the US investment company industry. Its membership includes 8,935 open-end investment companies ("mutual funds"), 559 closed-end investment companies, and 6 sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.382 trillion, accounting for approximately 95% of total industry assets, and over 90.2 million individual shareholders.

² Investment Company Act Release No. 25922 (Jan. 31, 2003), 68 Fed. Reg. 6564 (Feb. 7, 2003) ("Adopting Release"); Investment Advisers Act Release No. 2106 (Jan. 31, 2003), 68 Fed. Reg. 6585 (Feb. 7, 2003).

procedures to address potential conflict of interest situations; (3) requiring funds to disclose their proxy voting policies and procedures to shareholders; and (4) requiring advisers to funds to maintain records regarding proxy voting. As discussed in our earlier letter, we believe that all of the Commission's objectives and all of the potential benefits to fund investors could have been realized if the Commission adopted those aspects of the Commission's proposals and also required fund directors to approve proxy voting policies and procedures and to oversee the implementation of those policies and procedures.³ We were disappointed, therefore, that the Commission determined to adopt the requirement that mutual funds disclose all proxy votes cast.

In adopting the proxy voting proposals, the Commission modified its original proposals in several respects. One change from the original proposals is the requirement for mutual funds to disclose their complete proxy voting records on new Form N-PX (instead of on Form N-CSR) on an annual basis. Because the Commission is adopting a new form, it is soliciting comments on the accuracy of its Paperwork Reduction Act analysis. In particular, the Commission is soliciting comments to evaluate, among other things: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the Commission's estimate of the burden of the proposed collection of information; and (3) whether there are ways to minimize the burden of the collection of information on those who are to respond.

As discussed below, the answers to these questions indicate that the Commission has failed to meet its burden in demonstrating that the collection of information required by Form N-PX meets the standards of the Paperwork Reduction Act. In light of the fact that the Commission has not met its burden, we believe the Commission should conduct an impact study to evaluate whether disclosure of fund proxy voting records is really necessary to achieve the Commission's goals, especially given the other proxy voting requirements that it adopted. Pending the completion of such study, we recommend that the Commission withdraw Rule 30b1-4 and Form N-PX under the Investment Company Act.

II. Paperwork Reduction Act Burden Estimates

A. The Commission Has Failed to Demonstrate that Disclosure of Fund Proxy Voting Records Is Necessary for the Proper Performance of the Commission's Functions

Comment is sought on whether the proposed collection of information is necessary for the proper performance of the functions of the Commission. One of the primary functions of the Commission is the protection of investors. As the following discussion makes clear, the Commission has not demonstrated that the disclosure of fund proxy voting records is necessary for the Commission to protect investors. The Commission gave three justifications for requiring disclosure of fund proxy voting records. First, it stated that such disclosure will provide better

³ Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated December 6, 2002 ("Institute Comment Letter").

information to investors.⁴ Second, it stated that disclosure of proxy votes will deter voting motivated by conflicts of interest.⁵ Third, it stated that disclosure of proxy votes will provide stronger incentives for fund advisers to vote their proxies conscientiously.⁶ The Commission provided no meaningful evidence, however, in support of any of these three alleged benefits.⁷

Information to Investors. The Commission stated in the Adopting Release that mutual fund shareholders need proxy voting record information so that they can select funds that better match their particular preferences.⁸ No evidence is proffered, however, that mutual fund shareholders consider the current level of information about proxy votes to be inadequate for purposes of selecting funds.⁹ We note that investors who are interested in information about a fund's proxy voting record can choose to invest in several funds that voluntarily make this information public.

The Commission admitted that investors do not appear to value disclosure about proxy votes as much as they value other information.¹⁰ But it dismissed this point by arguing that this does not mean that investors place no value on this information and that requiring disclosure of proxy voting records could serve to engender interest in this type of disclosure.¹¹ Under this

⁴ Adopting Release at 6568 and 6574.

⁵ *Id.* at 6575.

⁶ *Id.*

⁷ In addition to these three purported benefits, the Commission cited the benefits to the economy that will result from improved corporate governance, but noted that these benefits are difficult to measure. The Commission further noted that "[w]hile measuring the effects of such a rule involves a high degree of uncertainty, the scale of the aggregate portfolio holdings involved suggests that they may be substantial." See Adopting Release at 6575. We submit that this method of measuring benefits is unacceptable. By this logic, the Commission could argue that *any* rule that applies to funds would have a substantial effect (and therefore lead to substantial benefits) because of the scale of aggregate fund portfolio holdings.

⁸ Adopting Release at 6574.

⁹ In fact, many fund groups that submitted comment letters on the Commission's proposals indicated in their letters that fund shareholders have expressed little or no interest in information concerning proxy votes cast by the fund. See, e.g., Letter from R. Gregory Barton, Managing Director and General Counsel, Vanguard Group, to Jonathan G. Katz, Secretary, SEC, dated Dec. 5, 2002; Letter from Karl J. Ege, General Counsel and Secretary, Frank Russell Investment Company and Russell Insurance Funds, to Jonathan G. Katz, Secretary, SEC, dated Dec. 5, 2002; Letter from Robert Graham, President and CEO, AIM Management Group, Inc., to Jonathan G. Katz, Secretary, SEC, dated Dec. 5, 2002; Letter from Henry H. Hopkins and Darrell N. Braman, T. Rowe Price Associates Inc., T. Rowe Price International Inc. and the T. Rowe Price family of funds, to Jonathan G. Katz, Secretary, SEC, dated Dec. 6, 2002; Letter from Philip L. Kirstein, General Counsel, Merrill Lynch Investment Managers, L.P. to Jonathan G. Katz, Secretary, SEC, dated Dec. 6, 2002; Letter from Edward P. Macdonald, Secretary, American Skandia Trust and American Skandia Advisor Funds, Inc., to Jonathan G. Katz, Secretary, SEC, dated Dec. 6, 2002; Letter from Domenick Pugliese, Senior Vice President, Alliance Fund Distributors, Inc., to Jonathan G. Katz, Secretary, SEC, dated Dec. 5, 2002; Letter from Murray L. Simpson, Executive Vice President and General Counsel, Franklin Templeton Investments, to Jonathan G. Katz, Secretary, SEC, dated Dec. 9, 2002; Letter from Brian T. Zino, President, J. & W. Seligman Incorporated, to Jonathan G. Katz, Secretary, SEC, dated Dec. 6, 2002.

¹⁰ Adopting Release at 6575.

¹¹ *Id.*

standard, however, virtually any proposed disclosure requirement would be justified. The Commission also attempted to demonstrate investor interest in this information by citing to the number of favorable comments it received on the proposal from individual investors and to a vote on a recent shareholder proposal seeking to require a major fund to disclose its proxy votes on social and environmental issues.¹² Neither example, however, is persuasive.

First, the approximately 7,200 comment letters submitted by individuals in support of the proposal represent approximately .008% of mutual fund shareholders. (This assumes that all 7,200 commenters are actually fund shareholders.) As Commissioner Glassman stated at the Commission's open meeting on January 23, 2003, the staff's reference to these form comment letters was not persuasive when "compared to the 95 million mutual fund shareholders in the U.S."¹³ Commissioner Atkins echoed that sentiment when he stated that the 7,200 letters represent an "infinitesimally small percentage of all fund shareholders."¹⁴ Moreover, as Commissioner Atkins further pointed out, the vast majority of these comment letters were "form letters sent in response to an organized letter writing campaign" initiated by various special interest groups.¹⁵ We note that, in conducting their campaign, these special interest groups did not bother to inform investors of the costs or potential harms of the disclosure. It is quite clear that the filing of these letters does not show that investors in general need or want this type of disclosure.

The Commission's reliance on the proxy vote noted above is even more strained. While the Adopting Release stated that the vote showed "significant support" for disclosure of proxy votes,¹⁶ the fact of the matter is that *over 76%* of shareholders voted *against* the proposed disclosure. Using the Commission's logic, the results of the 2000 Presidential election show that Ralph Nader should be in the White House. As Commissioner Glassman observed, the results of this vote "do not suggest a ground swell in favor of requiring funds to disclose their proxy votes."¹⁷ In short, the Commission has not shown that the disclosure will assist investors in making investment decisions.

Conflicts of Interest. The Commission stated in the Adopting Release that disclosure of fund proxy voting records will deter voting motivated by conflicts of interest. As in the release proposing the new requirements,¹⁸ however, the Commission offered no evidence of any votes

¹² Adopting Release at 6568.

¹³ Transcript of the Securities and Exchange Commission Open Meeting for Proxy Voting (Jan. 23, 2003) ("Transcript") at 75.

¹⁴ *Id.* at 88.

¹⁵ *Id.* at 87.

¹⁶ Adopting Release at 6568.

¹⁷ Transcript at 76.

¹⁸ Investment Company Act Release No. 25739 (Sept. 20, 2002), 67 Fed. Reg. 60828 (Sept. 26, 2002) ("Proposing Release").

being cast in a manner contrary to the interests of fund shareholders as a result of conflicts of interest. Obviously, unless such voting occurs, investors will not benefit from the new disclosures. As we indicated in our comment letter on the proposal, many funds are not subject to the types of conflict situations that the Commission cited in the Proposing Release and those that employ a variety of practices designed to address such conflicts.¹⁹ Moreover, as noted below, other aspects of the rules adopted by the Commission would further mitigate any potential conflicts of interest. Thus, there is no evidence that disclosure of fund proxy voting records will meaningfully benefit investors by deterring conflicts of interest in the voting of proxies by mutual funds.

Incentives for Fund Advisers. The Adopting Release stated that disclosure of proxy votes would increase mutual funds' focus on corporate governance. Once again, however, the Commission provided no evidence of funds failing to exercise appropriately their voting rights in matters of corporate governance.²⁰ In fact, funds do exercise their proxy voting rights actively and carefully, including with respect to corporate governance matters.²¹

Moreover, if the Commission's conclusion that funds are not sufficiently focused on corporate governance were correct, the new rules requiring funds to have, and disclose, proxy voting policies and procedures (which the Institute supported) will ensure that funds consider corporate governance issues. The Adopting Release enumerated specific areas that the policies should address.²² Disclosure of individual votes therefore is not necessary to fulfill this purpose.

¹⁹ Institute Comment Letter at 5.

²⁰ Commissioner Atkins, who voted against the proxy voting proposals specifically because he opposed requiring disclosure of proxy votes, stated that "there is no evidence that funds are not voting proxies in the manner that reinforces strong corporate governance." Transcript at 92.

²¹ Many fund groups confirmed this fact in their comment letters to the Commission on the proposals. *See, e.g.*, Letter from R. Gregory Barton, Managing Director and General Counsel, Vanguard Group, to Jonathan G. Katz, Secretary, SEC, dated Dec. 5, 2002; Letter from Paul G. Haaga, Jr., Executive Vice President, Capital Research and Management Company, to Jonathan G. Katz, Secretary, SEC, dated Dec. 6, 2002; Letter from Henry H. Hopkins and Darrell N. Braman, T. Rowe Price Associates Inc., T. Rowe Price International Inc. and the T. Rowe Price family of funds, to Jonathan G. Katz, Secretary, SEC, dated Dec. 6, 2002; Letter from Domenick Pugliese, Senior Vice President, Alliance Fund Distributors, Inc., to Jonathan G. Katz, Secretary, SEC, dated Dec. 5, 2002; Letter from Eric D. Roiter, Senior Vice President and General Counsel, to Jonathan G. Katz, Secretary, SEC, dated Dec. 6, 2002; Letter from Murray L. Simpson, Executive Vice President and General Counsel, Franklin Templeton Investments, to Jonathan G. Katz, Secretary, SEC, dated Dec. 9, 2002; Letter from Robert G. Zack, Senior Vice President and General Counsel, Oppenheimer Funds, Inc., to Jonathan G. Katz, SEC, dated Dec. 2, 2002; Letter from Brian T. Zino, President, J. & W. Seligman Incorporated, to Jonathan G. Katz, Secretary, SEC, dated Dec. 6, 2002.

²² These areas include: (1) corporate governance matters, including changes in the state of incorporation, mergers and other corporate restructurings, and anti-takeover provisions such as staggered boards, poison pills, and supermajority provisions; (2) changes to capital structure, including increases and decreases of capital and preferred stock issuance; (3) stock option plans and other management compensation issues; and (4) social and corporate responsibility issues.

B. The Commission Has Underestimated the Burden of the Collection of Information

1. *Cost Burden*

The Commission greatly underestimated the costs associated with disclosing proxy voting records.²³ As discussed in greater detail below, the Commission's analysis is deficient in two respects. First, it understated the direct costs of the requirement. Second, it ignored significant indirect costs. We are not alone in pointing out the inadequacy of the Commission's analysis. Commissioner Atkins stated at the SEC's open meeting that the "paucity of [the SEC's] cost-benefit analysis will open this up to procedural and legal challenge."²⁴

a. *Direct Costs*

The Commission estimated that the burden of filing Form N-PX would equal \$5.16 million in total internal costs annually or \$992 per equity fund portfolio.²⁵ We believe that a more realistic estimate of the costs that mutual funds, and hence fund shareholders, would have to bear under Form N-PX would be a transition cost of \$22 million and annual recurring costs of \$40 million.²⁶

These estimates are very similar to those included in our comment letter on the SEC's original proposal. We acknowledge that the Commission has made certain changes to the original proposal, and we have adjusted our cost estimates accordingly. For example, we have eliminated costs associated with certifying the proxy voting record, as well as costs involved in

²³ See Jonathan S. Bowater, Paul S. Lowengrub and James C. Miller III, *The SEC's Proposal to Require Mutual Funds to Publish Proxy Votes*, attachment to Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated Jan. 16, 2003. This paper reviews, in light of OMB guidelines, the analysis of benefits and costs identified by the SEC for its proposal to require mutual funds to disclose their proxy voting records. The paper concludes that the SEC's analysis of the costs of proxy voting disclosure is deficient in several respects. In particular, the paper finds that the analysis of the direct costs is incomplete and based on flawed assumptions and, consequently, is significantly lower than what the actual costs would be and that the analysis fails to consider the significant indirect costs. The paper recommends that the SEC conduct a more sophisticated and complete analysis of the benefits and costs of the requirement. See also Chet Currier, *Greetings, Fund Investors, You're in the Army Now*, Bloomberg, Jan. 24, 2003 (questioning the costs of the proxy voting disclosure requirements and noting that ultimately fund investors will pay these costs).

²⁴ Transcript at 94.

²⁵ In calculating the total cost, the Commission estimated that 5,200 fund portfolios that hold equity securities would be required to file Form N-PX.

²⁶ Our cost estimates are based on the data collected from a survey of eight complexes previously conducted for the Institute in November 2002 by Ernst & Young LLP ("E&Y Study") in connection with calculating cost estimates for the Commission's proxy voting proposals and based on an estimate that 4,700 funds would be subject to the requirements. The SEC's revised cost estimate was based on data that indicated that 5,200 funds (4,700 equity funds and 500 hybrid funds) would be subject to the new requirements. Accordingly, we have revised our total cost estimate based on 5,200 funds.

fulfilling requests for written copies of the record.²⁷ Nevertheless, most of the costs associated with the Commission's original proposal are still present. For example, fund groups will still have to ensure that they have adequate systems (either internally or through third parties) to capture all of the data necessary to be disclosed, and in the proper format. They will need to have procedures in place to review the disclosure. And they will still have to respond to shareholder and third-party inquiries, which will require, in turn, training of shareholder servicing personnel and related costs.²⁸

Taking the changes to the original proposal into account resulted in a reduction of estimated average start-up costs per fund from \$3,380 to \$3,216 and average annual costs per fund from \$5,530 to \$4,613 to capture and review the proxy voting records. There would be no reduction in the initial average start-up cost of \$1,050 per fund to train shareholder servicing personnel to respond to any inquiries resulting from the disclosure of the proxy voting record, but there would be a reduction in average annual costs from \$3,180 to \$3,074 per fund.²⁹

b. Indirect Costs

The Commission also failed to account for the significant indirect costs associated with disclosing proxy voting records, blaming the difficulty in quantifying these costs on the lack of estimates of the magnitude of these costs from commenters.³⁰ We believe that these indirect costs should not be disregarded simply because they are difficult to measure. Rather, the Commission should have undertaken independently to assess these costs and included them in its analysis. Certain of the indirect costs that the Commission failed to include in its analysis are described below.

First, the Commission ignored the costs that funds would have to incur as a result of politicization of the proxy voting process.³¹ Such costs include, as we noted in our initial

²⁷ The Adopting Release noted that the Commission did not adopt the proposed requirement to disclose "inconsistent" proxy votes in fund shareholder reports. In our comment letter, we did not include costs associated with this proposal in our estimate of the costs associated with disclosure of a fund's proxy voting record, but provided a separate cost estimate. See Institute Comment Letter at 18-19.

²⁸ The Commission refused to include in its estimate costs involved in responding to shareholder and third-party inquiries. The Commission reasoned that because it has modified the rule to permit funds to choose to provide their proxy voting records to shareholders through Web site disclosure as well as upon request, the number of shareholder requests received by phone would be reduced. The Commission did not understand the components of this cost. This cost would involve training shareholder servicing personnel to answer questions that might arise with respect to the contents of the proxy voting records and not merely to receive shareholder requests for the records.

²⁹ The annual cost decreased because we eliminated the costs involved in providing shareholders with a hardcopy of the proxy voting records.

³⁰ The Commission did not hesitate, however, in taking into account benefits that are difficult to measure. See *supra* note 7.

³¹ Then-Chairman Pitt dismissed out of hand concerns that the proxy vote disclosure requirement would contribute to greater politicization of the proxy voting process, stating that "those who have aggressive programs right now know where large blocks of stocks are located." Transcript at 100. The Chairman ignored the fact that a public disclosure requirement would make it much easier for special interest groups to identify funds' proxy votes, thereby greatly

comment letter, the need for senior management to devote significant amounts of time to respond to pressure from special interest groups.

Second, the Commission disregarded the indirect cost of funds losing their ability to vote confidentially.³² As Commissioner Atkins stated, the requirement to disclose the proxy voting record “completely ignores those who have long argued for the benefits of confidential voting and significantly undermines that avenue completely.”³³ The Commission claimed that confidentiality would be protected so long as disclosure is not required before the vote has taken place.³⁴

The Commission’s conclusion demonstrates a surprising lack of understanding of this issue.³⁵ First, the Commission ignored the fact that advocates of confidential voting believe that it is necessary to retain confidentiality after a vote is cast.³⁶ Second, confidentiality in voting is desired, at least in part, because it enables shareholders to avoid possible retaliation from corporate management for voting in a certain way. Disclosing votes after they are cast does not eliminate the potential for retaliation. As we noted in our initial comment letter, the elimination of confidential voting for mutual funds will only *increase* potential conflict of interest situations, notwithstanding the Commission’s stated objective of deterring conflicts.³⁷ This represents a cost to fund shareholders.

facilitating the ability of such groups to politicize the process. This consequence of the disclosure requirement is not lost on shareholder activists, one of whom recently stated that, “[i]f you can put pressure on the guys voting the big block of stock, then that is meaningful.” See Eileen Ambrose, *Putting in Your Two Cents’ Worth; Shareholders Are Speaking Up*, Baltimore Sun, Mar. 11, 2003.

³² Adopting Release at 6578. One of these costs includes undermining funds’ use of “behind the scenes” communication. The Commission claimed that disclosure of proxy voting records would not force funds to disclose “behind the scenes” communications. Adopting Release at 6568. The Commission missed the point; if funds are forced to disclose their votes, then “behind the scenes” communications may be less effective.

³³ Transcript at 90.

³⁴ Adopting Release at 6568.

³⁵ Then-Chairman Pitt revealed his lack of understanding of the issue when he stated that “[t]his proposal has absolutely no effect on and nothing to do with confidential voting.” Transcript at 99.

³⁶ See, e.g., Corporate Governance Policies, Council of Institutional Investors, at http://www.cii.org/corp_governance.asp (Core Policy #1 provides in part that “[c]onfidentiality should be automatic and *permanent* and should apply to all ballot items.”) (Italics added).

³⁷ The Commission stated in the Adopting Release that “there is no evidence that retaliatory action by portfolio company management has occurred or might occur as a result of proxy voting disclosure.” Adopting Release at 6579. If it is true that portfolio companies would never take action against fund advisers that voted against them, then it is hard to see what conflicts of interest the proposed disclosure of proxy votes is intended to deter in the first place.

2. *Hour Burden*

The Commission also underestimated the hour burden that Form N-PX would entail. It estimated that the total annual burden for the industry for filing proxy voting records on Form N-PX would be 74,880 hours. In calculating the total annual burden, the Commission estimated that 5,200 fund portfolios that hold equity securities would be required to file Form N-PX. For each of these funds, the Commission estimated that the disclosure of its proxy voting record in filings on Form N-PX as of the end of each twelve-month period would require, on average, 14.4 hours per filing per equity portfolio.

We believe the actual total hourly burden would be significantly greater. We estimate that the proxy voting record disclosure would require, on average, 111.5 hours per filing per portfolio subject to the requirements³⁸-- more than seven times the hour burden estimated by the Commission. Using the Commission's data on the number of funds that would be required to file Form N-PX (5,200), the total industry burden would be 579,800 hours.

C. There Are Ways to Achieve the Commission's Goals without Imposing Significant and Unnecessary Burdens on Funds

The Paperwork Reduction Act requires agencies to consider whether there are ways to minimize the burdens imposed by the collection of information. In adopting Form N-PX, the Commission failed to consider adequately such alternatives. As described in our comment letter to the Commission on the proposals, all of the Commission's goals and all of the potential benefits could be achieved through adoption of most of the other aspects of the proposal and without requiring mutual funds to disclose their complete proxy voting record.³⁹ In that submission, we recommended that the Commission adopt the beneficial aspects of the proposals (*e.g.*, requiring all funds to have written proxy voting policies, including policies that address how conflicts of interest will be addressed, and imposing recordkeeping requirements that facilitate review by Commission examiners) and also require fund directors to approve, and oversee the implementation of, proxy voting policies and procedures. The Commission failed to investigate whether this approach would achieve most or all of the proposed benefits.⁴⁰

³⁸ Our hourly estimate is based on the total annual industry cost divided by the SEC's estimated average hourly wage rate of \$68.94. (Our estimate of the average hourly wage rate was substantially similar to that of the Commission.) The total industry cost for complying with Form N-PX would include, among others, costs related to gathering and formatting all the votes cast and reviewing the proxy voting records for filing with the Commission, and costs involved in responding to shareholder and third party inquiries (including training of shareholder servicing personnel). The total industry cost represents only personnel costs. *See supra* Section II.B.1.a. for a complete discussion of direct costs.

³⁹ Institute Comment Letter at 19-20.

⁴⁰ Commissioner Atkins made this point and raised these other alternatives, including requiring disclosure of proxy voting policies and procedures and having the SEC's Office of Compliance, Inspections, and Examinations determine whether proxies are in fact voted in accordance with those policies and procedures. Transcript at 93. Commissioner Atkins expressed concern that the SEC was imposing "burdens without ever assessing whether an alternative or incremental method could be implemented." Transcript at 94.

For example, the Commission did not discuss on what basis it concluded that public disclosure of fund proxy votes would prove more effective than director oversight in addressing potential conflicts of interest.⁴¹ This is especially surprising given the Commission's reliance on fund directors in other areas involving potential conflicts of interest. Clearly, the Commission cannot sustain its burden under the Paperwork Reduction Act if it has failed to consider alternative measures to minimize the burden on funds and their shareholders.⁴²

III. Conclusion

For the reasons stated above, we believe that the Commission has not provided a complete and accurate estimate of burdens for purposes of the Paperwork Reduction Act. The Commission has not shown that requiring disclosure of proxy voting records of funds is necessary for the proper performance of its functions and has underestimated seriously the costs and burdens associated with the proposed collection of information. At the same time, the Commission has failed to examine adequately other less burdensome means to achieve its stated goals in adopting the proxy voting record disclosure requirement. We, therefore, recommend that the Commission withdraw Rule 30b1-4 and Form N-PX under the Investment Company Act and conduct an impact study to evaluate whether disclosure of fund proxy voting records is really necessary to achieve the Commission's goals.

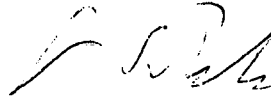
⁴¹ In the Adopting Release, the Commission stated that it disagreed with the argument that proxy voting disclosure will "undermine the authority of funds' boards of directors." Adopting Release at 6568. This grossly mischaracterizes the point. The point is not that the disclosure will undermine the authority of fund directors, but rather that reliance on directors would be far more effective and efficient in achieving the Commission's stated goals. Our recommendation, which was summarily dismissed by the Commission, is directly relevant to the Commission's obligations under the Paperwork Reduction Act.

⁴² The Commission did not even consider alternative disclosure approaches that would have reduced certain direct or indirect costs, such as exempting proxies for issuers that have adopted confidential voting, which would have reduced the indirect costs associated with the loss of confidential voting for mutual funds.

Office of Management and Budget
Securities and Exchange Commission
March 13, 2003
Page 11 of 11

Questions regarding our comments or requests for additional information should be directed to the undersigned at (202) 326-5815, Amy Lancellotta at (202) 326-5824, or Jennifer Choi at (202) 326-5810.

Sincerely,



Craig S. Tyle
General Counsel

cc: The Honorable William H. Donaldson
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Cynthia A. Glassman
The Honorable Harvey J. Goldschmid

Paul F. Roye, Director
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