

# Recent Developments in Mutual Fund Proxy Voting

by Ellen Drought and Alia S. Mendez

**I**n the five years that mutual funds have been required to disclose their proxy voting records, much attention has been paid to funds' proxy voting practices. The Securities and Exchange Commission (SEC) adopted the rule to increase transparency<sup>1</sup> and to address potential conflicts of interest, such as the perception that mutual funds vote with management to further business relationships with corporations. Given the voting power of mutual funds, which hold over \$9 trillion in assets under management<sup>2</sup> and control approximately 27 percent of US stocks,<sup>3</sup> fund proxy voting continues to receive scrutiny by regulators, the media, and investor advocates.

Recent developments have highlighted the need for mutual funds and their directors to re-evaluate fund proxy voting procedures. A study released by the Investment Company Institute in 2008 has provided the most comprehensive look at proxy voting by mutual fund companies to date. Additional guidance was issued by the SEC and the Independent Directors Council (IDC) in 2008. Fund voting practices also have been discussed in connection with recent events, such as contested director elections,<sup>4</sup> shareholder proposals, and the continued debate on executive compensation, including "say on pay" proposals.<sup>5</sup>

Fund companies and their directors should regularly reassess proxy voting policies in keeping with the fund's investment objectives, regulatory directives, and current events. This article reviews the legal framework for proxy voting, discusses recent developments affecting mutual fund proxy voting, and provides suggestions for how to structure and oversee an effective proxy voting program.

## Legal Framework

A mutual fund's board of directors is required to vote proxies with respect to the fund's portfolio securities.<sup>6</sup> This responsibility is typically delegated to the fund's investment adviser, subject to oversight by the board. As fiduciaries, investment advisers to mutual funds are required to vote proxies in the best interest of shareholders. They are further guided by the funds' investment objectives and the proxy voting policies adopted by the board. The proxy voting policies may be unique to the fund or may incorporate the adviser's policies. These policies typically indicate how a fund will vote on various categories of proxy proposals, such as the uncontested election of directors, the ratification of auditors, or anti-takeover measures. For proposals that call for a nuanced analysis, for example, a proposal relating to a merger, corporate restructuring, or a particular executive compensation plan, the guidelines may provide for a case-by-case determination. The policies also may provide that the fund generally will follow the advice of a third party proxy voting firm or will use the services of such firms to address conflicts of interests.

Mutual funds have been required to disclose their proxy voting policies and procedures in the fund's Statement of Additional Information (SAI)

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Ellen Drought is a shareholder, and Alia S. Mendez is an associate, in the Investment Management practice group of Godfrey & Kahn, S.C.

since 2003. In particular, Item 12 of Form N-1A requires:

- A description of the policies and procedures the fund uses to determine how to vote proxies relating to portfolio securities, including procedures for when a vote presents a conflict of interest between fund shareholders and the fund's investment adviser, principal underwriter, or other affiliated person; and
- A description of the policies and procedures of the fund's investment adviser or other third party that the fund uses to determine how to vote proxies relating to its portfolio securities.<sup>7</sup>

In addition, funds are required to file Form N-PX on an annual basis by August 31, which contains the funds' proxy voting record for the 12-month period ended June 30.<sup>8</sup>

Investment adviser proxy voting practices are regulated by Rule 206(4)-6 under the Investment Advisers Act of 1940, which requires an investment adviser to:

- Adopt and implement written policies and procedures to ensure that it votes proxies in the best interests of clients, including how it addresses material conflicts of interest between the adviser and clients;
- Describe its proxy voting procedures to its clients and provide copies upon request; and
- Disclose how clients can obtain information on how the adviser voted proxies with respect to their securities.

## Recent Guidance

Mutual fund voting policies and related compliance issues have been addressed in recent industry and regulatory guidance.

## ICI Study/Stevens Speech

### ICI Study

In July 2008, the ICI released its analysis of proxy voting by mutual funds.<sup>9</sup> The ICI reviewed more than 3.5 million proxy votes cast by 160 of the largest fund families for the 12-month period ended June 30, 2007.<sup>10</sup> The study included key findings regarding types of proxy proposals, the priorities set forth in fund proxy voting guidelines and the procedures adopted by funds to manage potential conflicts of interest. The study noted that while votes necessarily vary depending on the specifics—a fund may vote differently on an identical proposal at different companies—some common themes are evident from the data.

### Proxy Voting Guidelines

The ICI reviewed the proxy voting guidelines of 35 of the largest fund families in August 2007.<sup>11</sup> The study found that most funds would oppose antitakeover provisions such as supermajority voting, classified boards, and poison pills.<sup>12</sup> The study found that fund policies regarding board structure and director elections reflect divergent views. Funds (other than socially responsible funds) typically do not advocate supporting social and environmental proposals. Finally, funds favor executive compensation proposals that align the interests of company executives with shareholders and oppose highly dilutive or excessive proposals.

### Proxy Voting Record

The ICI found that votes were generally consistent with the fund's proxy voting guidelines. While

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the vast majority of the votes analyzed (over 80 percent) concerned routine proposals, such as the uncontested election of directors or the ratification of auditors, there were a large number of votes on unique “other management proposals” and shareholder proposals.<sup>13</sup> In particular, the voting data showed the following trends:

- *Director Nominees and Audit Firms:* Funds voted 92 percent in favor of board nominees and 98 percent to ratify the audit firm selected by the board. The study noted, however, that a fund may withhold votes if it does not feel a director meets independence standards or has served on a compensation committee for a company that it believes pays excessive executive compensation.<sup>14</sup>
- *Other Management Proposals:* Funds voted in favor of other management proposals 85 percent of the time, in keeping with proxy advisory firm recommendations. Fund votes in favor of shareholder rights/antitakeover-related proposals were in keeping with their proxy policies, “which generally favor elimination of antitakeover devices.”<sup>15</sup>
- *Shareholder Proposals:* Funds voted in favor of shareholder proposals almost 40 percent of the time, while management supported less than one percent of the proposals. The study observed that this finding contradicts the view that funds “reflexively accept the vote recommendations of company boards when voting on shareholder proposals.”<sup>16</sup>
- *Compensation:* Funds voted in favor of management compensation proposals 84 percent of the time; funds voted in favor of shareholder proposals related to executive compensation approximately 38 percent of the time. The study found that the votes depend on “funds’ voting guidelines, the specifics of the individual proposals, and whether funds view the proposals as likely to add shareholder value.”<sup>17</sup>

While proxy voting may be a frequent and at times routine exercise undertaken by mutual fund advisers, the ICI study concluded that actual proxy votes reveal a complex, “nuanced picture” about the judgments made by fund boards and advisers in determining how the proposals will enhance shareholder value.<sup>18</sup>

### *Stevens Speech*

Also in July 2008, ICI President Paul Schott Stevens delivered a speech at the American Institute

Forum in Washington, DC regarding how mutual funds vote their proxies.<sup>19</sup> In his speech, Mr. Stevens discussed the ICI study in light of allegations that mutual funds “rubber stamp” management proposals, oppose shareholder proposals, and may be influenced by business considerations in voting proxies. Stevens noted that while funds generally vote in favor of management proposals, this result is not surprising given that the vast majority of mutual fund votes are on routine matters such as uncontested director elections and ratification of auditors. He also observed that the data reflects that:

- Mutual funds generally vote in keeping with the major proxy advisory firm recommendations;
- Mutual funds vote in keeping with other institutional and individual shareholders on non-routine management proposals, although they are somewhat less likely to support management on compensation issues than other shareholders;
- Mutual funds frequently vote for shareholder-sponsored proposals in opposition to management<sup>20</sup>; and
- Fund proxy votes on executive compensation, as in other areas, depend on the type of proposal: “funds tended to favor advisory votes on executive pay—the so-called say-on-pay proposals—more than 50 percent of the time, but were less favorably inclined toward proposals to limit executive compensation or increase disclosure of that compensation.”<sup>21</sup>

Stevens stated that fund proxy policies indicate that funds generally vote in terms of the economic interests of fund shareholders, in a way that “they believe will maximize the fund’s financial returns.”<sup>22</sup> He concluded by noting that the ICI research, in keeping with other studies,<sup>23</sup> found that there is no evidence of votes being swayed by business relationships.

### **IDC/ICI Report**

The IDC and the ICI issued a joint publication in July 2008, “Oversight of Fund Proxy Voting” (IDC/ICI Report).<sup>24</sup> The paper reviewed the responsibilities of fund directors in the proxy voting process, discussed various proxy voting issues and offered guidance to fund boards with respect to proxy voting oversight.

### *Oversight of Proxy Voting Policy*

The IDC/ICI Report noted that board oversight of proxy voting is part of the directors’ “general

fiduciary duties of care, loyalty, and good faith.”<sup>25</sup> A major component of this responsibility relates to the approval and review of the fund’s proxy voting policy. The report discussed various factors that the board may consider in evaluating the proxy voting policy, such as:

- Consistency with the fund’s investment objectives;
- Treatment of potential conflicts of interest;
- Treatment of specific categories of proposals;
- Treatment of social issues; and
- Policy exceptions.<sup>26</sup>

The report also recommends that the board identify the types of reports it wishes to receive (all votes, exception reports, votes with respect to companies that have business ties to the adviser) and the frequency.

### ***Oversight of Investment Adviser***

The report recommends that the board inquire as to the adviser’s proxy voting process, to ensure that proxies are voted on time and in accordance with the fund’s policy. In particular, the adviser should:

- Monitor portfolio company proxy statements;
- Devote sufficient staff and operational resources to proxy voting; and
- Take steps to ensure that proxy votes and the fund’s Form N-PX are filed on time.

Further, the board should understand the adviser’s process for addressing potential conflicts, including whether board input may be solicited in resolving conflicts, and whether conflicts are disclosed to the board.<sup>27</sup>

### ***Other Issues***

The IDC/ICI Report addresses other issues relating to the proxy voting process, including:

- The use of third-party proxy voting services, which can range from administrative to reporting, to implementing policies, providing research, making recommendations and executing votes;
- Boards that retain proxy voting authority;
- Oversight of subadvisers;
- Affiliated fund of funds;
- Foreign securities; and
- Securities lending.<sup>28</sup>

The paper concludes with an appendix discussing techniques to identify and resolve investment adviser conflicts of interest.

### **SEC Compliance Alert**

The SEC examination Staff periodically publishes a “Compliance Alert,” which summarizes common deficiencies identified during examinations of registered firms, including investment advisers and mutual funds. In the Compliance Alert published in July 2008, the SEC Staff outlined various deficiencies found by examiners relating to proxy voting, particularly with respect to the use of third-party proxy voting services.<sup>29</sup> SEC Staff findings included the following:

- Boards lacked sufficient oversight over the use of proxy service providers. For example, some funds did not (1) confirm that the third party services’ recommendations were consistent with the funds’ policies; or (2) obtain information regarding the conflicts of interest at the service provider.
- Advisers had not documented their review of proxy service providers in order to assess oversight of conflicts of interest and ensure independence.
- Funds did not always follow their proxy voting guidelines.
- The Form N-PX was incomplete.
- SAI disclosures were deficient.
- Fees paid to proxy service providers were improper (for example, the fund did not hold voting securities) or not properly disclosed (for example, when paid for with soft dollars).

### **Structuring an Effective Proxy Voting Program**

As with other components of a fund’s compliance program, the proxy voting program should be tailored to the firm and subject to various levels of oversight, including by the firm’s chief compliance officer and board of directors.

### **Developing Proxy Voting Policies**

Fund personnel will typically prepare the fund’s proxy voting policy and present it to the board for approval. While a template may be used as a starting point, the policies should be customized in keeping with the fund’s investment objectives, strategies, and philosophy on various corporate

governance issues. As noted above, funds may take divergent approaches in voting, but the proxy voting guidelines should be consistent with the fund adviser's fiduciary duty to maximize shareholder interests. The policies should state whether and how the fund will vote on specific categories of proposals, including proposals relating to social or environmental issues, and the processes it will use for determining if and when exceptions from the policies are warranted.<sup>30</sup> The policies typically will provide that the portfolio manager or proxy committee is authorized to deviate from the policy and make an independent decision based on the specific facts and circumstances.

Careful thought should be given to the best ways to address potential conflicts of interest. For example, in the event of a conflict of interest, the fund may:

- Follow predetermined voting guidelines;
- Vote in accordance with third party recommendations;
- Refer the matter to a proxy voting committee or the independent directors; or
- Implement organizational barriers to protect proxy votes from conflicts.<sup>31</sup>

## Implementing the Policy

Advisers should designate appropriate personnel to operate the fund's proxy voting program, subject to oversight by the chief compliance officer, proxy officer or other authorized employee. Often, implementation of the policy is housed with the firm's compliance department. Controls should be in place to ensure that:

- Proxies are compiled and reviewed;
- Votes are made in accordance with the policy and within the proxy voting deadlines;
- Required records are maintained;
- Proper disclosures are made to clients and regulators; and
- The policy is updated as necessary.

These controls may include:

- An audit of the fund's proxy voting records. For example, the policy states that the Fund generally votes for the ratification of the auditors. Does the voting record support this position?
- The reconciliation of the portfolio holdings of the fund and separate accounts with ballots received and voted. This will demonstrate

that proper communication is taking place between the custodian(s), the adviser, the proxy tabulator and, if applicable, the third party proxy service.

- A reconciliation of the votes provided to the proxy tabulator against what was actually voted.
- Periodic review of the proxy voting policies by portfolio managers and/or analysts to determine whether changes are necessary, such as whether (1) guidelines should be added to address new categories of proposals; or (2) whether the firm's position has changed. Following review by the compliance department and/or chief compliance officer, the amended policy should be presented to the fund board for approval.

Particular attention should be paid to the identification of potential conflicts of interest. These conflicts may arise from various sources, such as:

- Business relationships between portfolio companies and the firm (for example, a company may be a current or prospective 401(k) or pension client of the investment adviser);
- Business ties between portfolio companies and affiliates or separate business lines of the adviser;
- The adviser's proxy voting authority over the shares of a public company parent or affiliate;
- Individuals who serve as directors of a client company as well as a portfolio company;
- Familial relationships between advisory personnel and portfolio companies; or
- Relationships with a participant in a proxy contest.

The SEC's Compliance Alert noted that firms often rely on the chief compliance officer or proxy coordinator to identify conflicts, and that these processes "generally appeared to be effective."<sup>32</sup>

## Use of Proxy Voting Services

The use of proxy voting services has been acknowledged by the SEC Staff as appropriate in compliance publications as well as no action letters.<sup>33</sup> The adviser remains responsible for overseeing the performance of the service, including, among other things, the ability of the service to vote the fund's proxies consistently with the fund's policies and to file the complete voting

record on Form N-PX.<sup>34</sup> The adviser should consider making a due diligence visit to the service provider. Particular attention should be paid to the service provider's technology platform and conflict procedures. This review process should be documented. The proxy service should inform the adviser of material changes in its business or conflict procedures.<sup>35</sup> In the event the board is involved in the selection of the proxy voting service, it should ensure that sufficient due diligence has been undertaken as it would with the retention of any fund service provider.

## Disclosure

SAI disclosure and any related summary of the fund's proxy voting program should track minimum SEC disclosure requirements. As the SEC examination Staff noted in the Compliance Alert, some funds did not provide basic disclosures required by Form N-1A, such as the availability of their proxy voting policies.<sup>36</sup> In addition, the fund should discuss how it votes on key categories of proposals, such as executive compensation, election of board directors and altering voting rights, whether it relies on third party voting services, and if so, how, and how it addresses potential conflicts of interest.<sup>37</sup>

## Form N-PX

The preparation and filing of Form N-PX should be addressed as part of the fund's compliance program. Controls should be in place to ensure that the required information is included in the filing, such as the complete proxy voting record, and that the subject matter of the votes is sufficiently described.<sup>38</sup> Many firms outsource the preparation and filing of the Form N-PX to a third party service provider; in such a case, the fund's chief compliance officer and the officer signing the form should review the underlying data well in advance of the August 31 deadline. Finally, the chief compliance officer or another fund officer should review the form for consistency with the firm's proxy voting policies.

## Board of Directors Review

Following their initial approval of the fund's proxy voting policies, the board should review the proxy voting policies on a regular basis. Other recommended practices include the following:

- *Familiarity with Policies.* The board should understand the fund's proxy voting policy

and how the adviser views its positions as furthering shareholder value. In addition, the board should be familiar with how conflicts are addressed, including whether board participation may be required.

- *Familiarity with Operation of Program.* The board should understand how the program operates in practice and who is responsible for implementing the program. If a proxy service is used, the board should be familiar with the steps taken to oversee the proxy voting service, as well as the way the service handles conflicts of interest.<sup>39</sup>
- *Updating the Policy.* The board should review the proxy voting policy on an annual basis, either separately or as part of its review of the fund's compliance program. It should be expected that amendments will be necessary from time to time (for example, if a firm decides to retain or replace a proxy voting service, change or add a proxy voting guideline or respond to new business practices or regulatory developments.) Any material amendments should be approved by the board.
- *Review of Form N-PX.* The board should review the Form N-PX, which will indicate, among other things, whether the fund cast its vote and whether it cast its vote for or against management. For large fund complexes, it may not be possible for the board to review the entire proxy voting record; in such a case, the board may request an analysis and summary of exceptions from the adviser. The board should discuss key proxy decisions made during the year, how the votes tracked the fund's policies, what votes raised a potential conflict of interest and whether any exceptions to the policy were made.

## Conclusion

As the IDC/ICI Report observed, "there is no 'one-size-fits-all' approach to fund proxy voting or board oversight of the voting process."<sup>40</sup> Indeed, mutual funds often take different approaches to voting decisions as they seek to act to enhance shareholder value.<sup>41</sup> However, all funds must ensure that the proxy voting program is properly structured, implemented, and reviewed in keeping with the adviser's and board's respective fiduciary duty to shareholders. As recent events have demonstrated, mutual funds continue to play a key role in the proxy

voting process and critical corporate governance decisions.

## NOTES

1. *Disclosure of Proxy Voting Policies and Proxy Voting Procedures by Registered Investment Companies*, Securities Act Release No. 33-8188, Exchange Act Release No. 34-47304 (Apr. 14, 2003) (Fund Proxy Voting Adopting Release) (“despite the enormous influence of mutual funds in the capital markets and their huge impact on the financial fortunes of American investors, funds have been reluctant to disclose how they exercise their proxy voting power with respect to portfolio securities.”) *See also Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA-2106 (Jan. 31, 2003).

2. Investment Company Institute, “Trends in Mutual Fund Investing,” October 2008, [http://www.ici.org/stats/mflarctrends/trends\\_10\\_08.html](http://www.ici.org/stats/mflarctrends/trends_10_08.html).

3. Investment Company Institute, “2008 Investment Company Fact Book,” at 11, [http://www.ici.org/stats/latest/2008\\_factbook.pdf](http://www.ici.org/stats/latest/2008_factbook.pdf).

4. *See, e.g.*, Sam Mamudi, “In Penney Proxy Vote, It’s Fund vs. Fund,” *Wall St. J.* (Sept. 11, 2008) (noting that proxy voting services recommended that shareholders withhold votes for the board of directors of J.C. Penney Co. because the company did not act to limit executive severance packages but that a review of regulatory filings indicated that some fund families voted for the directors).

5. The executive compensation limits included in the government’s assistance plan to banks, the Troubled Asset Relief Program (TARP) and the expected increase in shareholder votes on executive compensation could cause funds to reassess their proxy voting policies. *See* Beagan Wilcox, “Will Scrutiny of Executive Pay Change Funds’ Voting?” *Ignites* (Oct. 17, 2008); Josh Martin, “Boards Brace for Universal TARP-Style Comp Caps,” *Agenda*, (Nov. 10, 2008); Marc Hogan, “Frank: ‘Say on Pay’ Push to Return Next Year,” *Agenda* (Nov. 10, 2008). TARP includes various restrictions on firms that participate in the program, such as limits on base pay, incentives and bonus plans tied to inappropriate or excessive risk; recovery of bonus or incentive compensation paid to an executive based on materially inaccurate financial statements, and the prohibition of golden parachute payments to executives. Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, § 111.

6. Fund Proxy Voting Adopting Release, *supra* n.1 (“Because a mutual fund is the beneficial owner of its portfolio securities, the fund’s board of directors, acting on the fund’s behalf, has the right and the obligation to vote proxies relating to the fund’s portfolio securities.”).

7. Form N-1A, available at <http://www.sec.gov/about/forms/formn-1a.pdf>. This requirement does not apply to funds that invest exclusively in non-voting securities.

8. Form N-PX, available at <http://www.sec.gov/about/forms/formn-px.pdf>. *See also* Rule 30b1-4 under the Investment Company Act of 1940.

9. “Proxy Voting by Registered Investment Companies: Promoting the Interests of Fund Shareholders,” *ICI Research Perspective*, July 2008, at 1 (ICI Study), <http://www.ici.org/pdf/per14-01.pdf>. The above discussion is a summary of general conclusions made in the ICI Study; please see the report for the specific data and findings.

10. ICI Study, *supra* n.9 at 2, 17. The analysis was limited to proxy votes by these funds for companies in the Russell 3000.

11. *Id.* at 13.

12. *Id.* at 14. The study found that “24 out of 25 fund families would oppose proposals to institute a supermajority voting standard; 22 out of 23 are opposed to dual-class stock structures; 28 out of 31 would oppose classified boards; 23 fund families either oppose, or oppose without prior shareholder approval, poison pill provisions.”

13. *Id.* at 17.

14. *Id.* at 18.

15. *Id.*

16. *Id.* at 20.

17. *Id.* at 18, 20, and 21. For example, funds voted in favor of proposals to tie executive stock or options awards to performance criteria 45 percent of the time. The ICI Study noted that while proxy guidelines may suggest that funds would generally favor these types of proposals, the votes reflect concerns about the merits of the particular proposals, the circumstances of the company and other ways to achieve the goal of aligning executive compensation to company performance.

18. *Id.* at 22.

19. Paul Schott Stevens, ICI President and CEO, “In the Shareholders’ Interest: Funds and Proxy Voting” (July 10, 2008) (Stevens Speech), available at [http://www.ici.org/statements/remarks/08\\_aei\\_proxy\\_stevens\\_speech.html](http://www.ici.org/statements/remarks/08_aei_proxy_stevens_speech.html).

20. As noted above, the ICI Study indicated that funds voted for shareholder proposals approximately 40 percent of the time in 2007.

21. Stevens Speech, *supra* n.19, discussing Figure 8.

22. *Id.*, following Figure 10.

23. Stevens cited Gerald F. Davis and E. Han Kim, “Business Ties and Proxy Voting by Funds,” 85 *Journal of Financial Economics* 552 (2007), and Burton Rothberg and Steven Lilien, “Mutual Fund Proxy Votes” (Working Paper Series, Feb. 2005), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=669161](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=669161).

24. IDC/ICI Report, available at [http://www.ici.org/issues/dir/ppr\\_08\\_proxy\\_voting.pdf](http://www.ici.org/issues/dir/ppr_08_proxy_voting.pdf).

25. *Id.* at 2.

26. *Id.* at 2-3.

27. *Id.* at 5-6.

28. *Id.* at 6-10.

29. US Securities and Exchange Commission, “ComplianceAlert,” July 2008, <http://www.sec.gov/about/offices/ocie/compliancealert0708.htm>.

30. IDC/ICI Report, *supra* n.24, at 2, 3.

31. IDC/ICI Report, *supra* n.24, Appendix at 11.

32. ComplianceAlert, *supra* n.29, at \*5.

33. Egan-Jones Proxy Services, SEC No-Action Letter, 2004 SEC No-Act. LEXIS 636 (May 27, 2004) (describing the circumstances under which a third party proxy service may

be considered independent under Rule 206(4)-6) under the Investment Advisers Act of 1940); Institutional Shareholder Services, Inc., SEC No-Action Letter, 2004 SEC No-Act. LEXIS 736 (Sept. 15, 2004) (indicating that an investment adviser may fulfill its fiduciary duty of care when employing a proxy voting firm based on the adviser's review of the proxy voting firm's conflict procedures).

34. IDC/ICI Report, *supra* n.24, at 7.

35. Institutional Shareholder Services, SEC No-Action Letter, *supra* n.33.

36. ComplianceAlert, *supra* n.29, at \*5.

37. *See, e.g.*, Joe Morris, "No Consensus on Vote-Data Compliance," *Ignites*, (Dec. 22, 2006) (noting that several firms list proxy vote topics without stating whether they support or

oppose them and/or merely use boilerplate language rather than provide meaningful disclosure).

38. *See* Form N-PX, *supra* n.8, Item 1, (a)-(i).

39. ComplianceAlert, *supra* n.29, at \*4.

40. IDC/ICI Report, *supra* n.24, at 1.

41. *See, e.g.*, "In Penney Proxy Vote, It's Fund vs. Fund," *supra* n.4; Fund Votes, "Large Fund Groups Failed to Support Tighter Pay Practices at Banks named in Bailout Plan: Fund Votes Analysis Shows," Oct. 16, 2008, [http://www.fundvotes.com/downloads/BailoutBanks\\_2008MFSayOnPayVotes\\_20081016.pdf](http://www.fundvotes.com/downloads/BailoutBanks_2008MFSayOnPayVotes_20081016.pdf) (noting that 14 fund groups voted against or abstained from "say-on-pay" resolutions at all eight banks included in the Treasury's bailout program in 2008 while 26 fund groups voted for every such resolution).