MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

December 22, 2010

Via Electronic Mail: rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-30-10; Reporting of Proxy Votes on Executive Compensation and Other Matters

Dear Ms. Murphy:

Managed Funds Association ("MFA")[1] welcomes the opportunity to comment on the Securities and Exchange Commission's proposal, "Reporting of Proxy Votes on Executive Compensation and Other Matters," Exchange Act Release No. 63123 (Oct. 18, 2010) (the "Release"), which would require institutional investment managers to report how they vote proxies relating to executive compensation matters as required by Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Many hedge fund managers would fall within the definition of "institutional investment manager" as proposed in the Release, and thus would be subject to the new reporting requirements.

While we generally support the intent of the requirements to enhance transparency of shareholder votes on executive compensation matters, we believe proposed Rule 14Ad-1 could be modified in a manner that would achieve the objectives of the Dodd-Frank Act and improve the value and accuracy of the information reported.

The proposed Rule would require each institutional investment manager with voting power over a vote on the executive compensation matters set out in new Section 14A of the Securities Exchange Act of 1934 annually to report voting information on Form N-PX. As proposed, the Rule would seem to apply to a Section 14A shareholder vote in which an institutional investment manager has voting power, but elects not to vote its shares. We believe reporting information with respect to such non-votes would be of minimal use to investors, would be burdensome for managers, and is not required by Section 951. As such, we

[1] MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately $1.5 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

recommend that the Rule require that a manager report information only when the manager has instructed an intermediary to vote its shares.

We refer specifically to the discussion of this issue in the letter submitted by the Committee on Federal Regulation of Securities of the Section of Business Law of the American Bar Association in its response to the Release ("ABA Letter").[2] The ABA Letter describes the considerations for an institutional investment manager, including a private fund manager, in determining whether to exercise its rights to vote its shares, and recommends that the SEC amend the proposed Rule so that managers would not be required to submit information about non-votes on Form N-PX. We agree with the discussion and recommendations set out in the ABA Letter.

As fiduciaries, hedge fund and other institutional managers act in the best interests of their clients. With respect to proxy voting matters, managers determine whether it is in the best interests of their clients for them to participate in shareholder votes. For a variety of reasons, hedge fund managers may elect to refrain from exercising their voting power.[3] For example, a manager implementing an investment strategy that is designed to achieve returns through short-term trading may determine that the substantial costs associated with tracking votes and identifying matters to be voted outweigh the benefit of participation in the shareholder vote, particularly if the manager is unlikely to continue to hold the shares at the time of the shareholder meeting and beyond.

Requiring managers that determine not to exercise their voting power to report information about the shareholder vote would not seem to serve any clear policy objective. In the case of a private fund manager, investors in funds it manages are sophisticated individuals and institutions that are aware of the manager's proxy voting policies. There would seem to be little benefit to such investors or the public generally in requiring reporting and disclosure of voting information if a manager has declined to vote.

Accordingly, we recommend that the proposed Rule require a manager to report information only when the manager has instructed an intermediary to vote its shares. Such a requirement would elicit more useful information from institutional investment managers and avoid imposing an unnecessary cost on investors when managers do not vote their securities, such as those that use investment strategies that are not related to the voting of proxies. This approach would also be consistent with Section 951, which does not appear to require reporting when a manager has not voted ("every institutional investment manager subject to section 13(f) shall report . . . how it voted").

We also recommend that the proposed Rule be modified to take into account the complex mechanics of proxy voting for institutional managers. While we appreciate the goal of requiring managers to report how they have voted, current portfolio management and custody practices in

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[2] Letter from Jeffrey W. Rubin, Chair, Committee on Federal Regulation of Securities, Section of Business Law, American Bar Association to Elizabeth Murphy, Secretary, Securities and Exchange Commission (Nov. 22, 2010).

[3] Proxy Voting by Investment Advisers, Investment Advisers Act Release No. 2106 (Jan. 31, 2003).

many cases do not allow an institutional manager to confirm whether its instructions to its broker were followed. In maintaining securities for institutional managers, prime brokers often have authority to lend the securities on behalf of the manager, and may also have authority to re-hypothecate the securities under the terms of their arrangements with the manager. Both securities lending and re-hypothecation have the effect of transferring voting power from the manager to another firm, and may not include a procedure for notifying the manager. For example, a prime broker may loan securities it holds on behalf of institutional managers without identifying which managers' securities were loaned. As a result, managers may not know over which securities they have voting power at the applicable record date.

Moreover, managers that submit instructions for shares to be voted often are unable to verify that the shares were actually voted according to the instructions due to the number of intermediaries involved in the proxy voting process. The involvement of such intermediaries in the submission of a manager's shareholder proxies, including proxy voting service providers, custodians, the DTC participant and others, create significant operational challenges to confirming that votes were submitted and recorded by an issuer.[4] A requirement that an institutional manager report on Form N-PX how the shares were actually voted would attach liability to the manager, which would likely be passed through the chain of intermediaries in some manner, further raising the costs and creating additional complications to any confirmation process.

Accordingly, we respectfully recommend that the proposed Rule require instead that each institutional investment manager report on Form N-PX how it instructed the shares to be voted. Such a requirement would continue to provide important information about a manager's voting on the Section 14A executive compensation matters, and would avoid mandating that managers undertake a new, costly vote confirmation process.

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[4] We note that the SEC in its proxy voting concept release has acknowledged this complexity ("This complexity stems, in large part, from the nature of share ownership in the United States, in which the vast majority of shares are held through securities intermediaries such as broker-dealers or banks; this structure supports prompt and accurate clearance and settlement of securities transactions, yet adds significant complexity to the proxy voting process. As a result, the proxy system involves a wide array of third-party participants in addition to companies and their shareholders, including brokers, banks, custodians, securities depositories, transfer agents, proxy solicitors, proxy service providers, proxy advisory firms, and vote tabulators.") Concept Release on the U.S. Proxy System, Investment Adviser Act Release No. 3052 (July 14, 2010).

Should you have any questions on the discussion above, please do not hesitate to contact Matthew Newell or the undersigned at (202) 367-1140.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
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