

On the other hand, many commenters, including a large number of fund industry participants, strongly opposed any requirement for a fund to provide disclosure of its actual proxy votes cast. First, they argued that shareholders are not interested in this disclosure, with many fund groups claiming that they have received virtually no requests from their shareholders for proxy voting information. Second, they argued that the proposals would deny funds the ability to vote confidentially and subject funds to pressure from corporate management to influence proxy voting decisions, as well as to retaliatory actions by management, such as restricting access by portfolio managers to corporate personnel. Third, on a related point, commenters argued that mandatory disclosure of proxy votes would undermine their ability to change corporate governance practices of portfolio companies through "behind the scenes" private communications. Fourth, they argued that requiring funds to disclose their proxy votes publicly will subject them to orchestrated campaigns in the media and elsewhere by special interest groups with social or political agendas different from those of fund shareholders, which will detract from a fund's ability to concentrate on the management of its portfolio. Fifth, fund industry commenters argued that the required disclosure of proxy votes would undermine the role of fund boards of directors, including independent directors, in overseeing proxy voting and protecting fund shareholders against conflicts of interest. Some of these commenters suggested that rather than requiring disclosure of proxy votes, the Commission should mandate that fund directors approve proxy voting policies and procedures, including policies and procedures for addressing potential conflicts of interest, and should require reports to be provided to fund directors concerning actual proxy votes cast. Sixth, the commenters argued that the costs of collecting and disclosing the information in semi-annual reports on Form N-CSR would be substantial and would exceed any benefit to shareholders from the disclosure.

After careful consideration of these comments, we continue to believe that requiring funds to disclose their complete proxy voting records will benefit investors by improving transparency and enabling fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies. With respect to the specific arguments raised by commenters who opposed disclosure of

proxy votes, we note first that the argument that investors are not interested in proxy voting disclosure is to some extent belied by the large number of favorable comments from individual investors that the proposal attracted. In addition, we note that a recent shareholder proposal seeking to require a major fund to disclose its proxy votes on social and environmental issues generated significant support from fund shareholders.<sup>34</sup> Further, regardless of whether all, or a majority of, investors are interested in proxy vote disclosure, we believe that fund shareholders who are interested in this information have a fundamental right to know how the fund has exercised its proxy votes on their behalf.

Second, while we are cognizant of concerns that disclosure will undermine funds' ability to vote confidentially and thereby lead to pressure on or retaliation against funds, we believe that this risk is not sufficient to outweigh shareholders' interests in knowing how their funds have voted their portfolio securities. In addition, as some proponents of the disclosure requirements argued, the principle of confidential voting is intended to protect shareholders from having their votes disclosed *prior* to a shareholder meeting, while the amendments that we are adopting would only require disclosure of votes two months or more *after* a shareholder meeting. We are also persuaded by other commenters who noted that a large majority of portfolio companies currently do not have confidential voting policies and that companies are often able to identify when and how a particularly large shareholder, such as a fund, has cast its votes.<sup>35</sup>

Third, with respect to the argument that the disclosure of a fund's proxy voting record will undermine the use of "behind the scenes" communications to change corporate governance practices, we note that disclosure by funds of their proxy votes is not inconsistent with these communications and will not force funds to disclose these

communications. Further, we believe that requiring a fund to disclose its proxy voting record may actually encourage it to become more engaged in corporate governance matters involving issuers held in its portfolio, through "behind the scenes" communications as well as other means.

Fourth, with respect to the argument that proxy vote disclosure will "politicize" the process of proxy voting by funds to the detriment of fund shareholders, we believe that to the extent that greater disclosure may encourage and enable shareholders to express their views on their funds' proxy decisions, that is an appropriate development. We agree, however, that fund shareholders could be adversely affected if, in fact, disclosure of fund proxy votes results in significant politicization of the proxy voting process by non-shareholder interest groups and interference with funds' ability to change corporate governance practices through "behind the scenes" communications. Therefore, the Commission has asked the staff to monitor the effects of the disclosure and report back to the Commission on the operation of the rules, and whether there have been any unintended consequences as a result of the disclosure, no later than December 31, 2005.

Fifth, we disagree with the argument that proxy voting disclosure will undermine the authority of funds' boards of directors, and that we instead should adopt amendments to require that boards be more involved in the proxy voting process. Disclosure of proxy votes is not inconsistent with, and, in fact, will promote recognition by fund boards of their obligation to exercise their proxy voting responsibilities in a manner that is consistent with shareholders' interests. Further, we believe that the additional requirements with respect to fund boards that some commenters suggested that we adopt in lieu of proxy voting disclosure are unnecessary. A fund's board of directors, acting on the fund's behalf, already has the obligation to vote proxies relating to the fund's portfolio securities. Although the board typically delegates this function to the fund's investment adviser, the adviser remains subject to the board's continuing oversight. By increasing transparency of proxy voting, the amendments will work in tandem with the existing obligation of fund boards.

Finally, with respect to arguments that the disclosure may impose excessive costs, we note that several fund groups that currently provide disclosure of their complete proxy

<sup>34</sup> See *CREF Participants Reject All Four Resolutions at 2002 Annual Meeting*, TIAA-CREF Press Release, Nov. 7, 2002 <[www.tiaa-cref.org](http://www.tiaa-cref.org)> (visited Jan. 14, 2002) (18.7% of shares voted in favor of shareholder proposal that College Retirement Equities Fund (CREF) disclose how it votes proxies that involve social and environmental issues).

<sup>35</sup> See Timothy M. Hunt, *IRRC Corporate Governance Service 2002 Background Report F*, Background Reports (IRRC) at 7, 10 (Jan. 2002) (noting that 26.9% of the S&P 500 companies have confidential voting procedures, with smaller percentages at smaller companies, and that use of street names often does not protect the identity of shareholders).