

concentrate on the management of its portfolio and ultimately harm fund shareholders. Finally, commenters asserted that the proposed disclosure requirements would impose substantial costs on funds, which would be passed on to their shareholders.

Other commenters, however, argued that proxy voting disclosure would improve competition by allowing investors who wish to consider proxy voting policies and records when deciding between two funds to do so. According to one such commenter, mandating proxy voting disclosure would thereby allow proxy voting policies and records to be fully "valued" by the marketplace.¹⁰¹ Many commenters also asserted that because funds hold a significant percentage of equity securities, requiring proxy vote disclosure by funds would improve corporate governance and accountability among issuers of portfolio securities, which would benefit investors broadly. With respect to the argument that disclosure would harm funds by "politicizing" the proxy voting process, one commenter argued that to the extent that this meant funds would come under market pressure for behavior that their investors disapprove of, this would be a positive, not a negative, result.¹⁰²

As discussed in more detail in the Cost-Benefit Analysis above, we continue to believe that the proxy vote disclosure required by the amendments will provide several benefits to fund investors. The amendments will provide better information to investors to use in selecting funds, and in determining whether fund managers are adequately maximizing the value of their shares. The amendments may also deter votes motivated by conflicts of interest. In addition, the amendments may provide stronger incentives to fund managers to vote their proxies carefully, which could thereby improve corporate performance and enhance shareholder value. With respect to the commenters' argument that the amendments may disadvantage funds by depriving them of confidential voting, we note that there is no evidence that retaliatory action by portfolio company management has occurred or might occur as a result of proxy vote disclosure, and that it is possible that this disclosure will encourage corporations to work harder to develop cooperative relationships with fund managers. With respect to the argument that disclosure of a fund's proxy voting

record may subject it to pressure from special interest groups to vote in a certain manner, we note that to the extent that this possibility is real, making voting policies and procedures available to investors will mitigate this influence to a large degree. With respect to the argument that the proposed disclosure requirements would impose substantial costs on funds, we have modified certain of our proposals to mitigate costs by requiring a fund to file its proxy voting record annually on new Form N-PX rather than semi-annually on Form N-CSR, by eliminating the requirement that a fund disclose its proxy votes (or failures to vote) that are inconsistent with its proxy voting policies and procedures, and by permitting a fund to choose to make available to its shareholders its record of how it voted proxies relating to portfolio securities on or through its Web site or upon request.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's rule and form amendments under the Securities Act, the Exchange Act, and the Investment Company Act to require funds to provide disclosure about how they vote proxies of portfolio securities they hold. Under the amendments, a fund will be required to disclose in its registration statement the policies and procedures that it uses to determine how to vote the proxies of portfolio securities. The amendments also require a fund to file with the Commission on new Form N-PX, and to make available to its shareholders, on or through its Web site or upon request, its record of how it voted proxies relating to portfolio securities.

Specifically, a fund will be required to disclose in its statement of additional information ("SAI") its policies and procedures used to determine how to vote proxies of the securities held in its portfolio, and to provide disclosure regarding the availability of its proxy voting record to shareholders.¹⁰³ The amendments also require a fund to file with the Commission, in an annual report on Form N-PX, its complete proxy voting record for the most recent twelve-month period ended June 30. The amendments require a fund to

include in its annual and semi-annual reports to shareholders disclosure that the fund's proxy voting policies and procedures, are available (i) without charge, upon request from the fund, (ii) on the fund's Web site, if applicable, and (iii) on the SEC Web site. The amendments also require a fund to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site. The Commission prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 in conjunction with the Proposing Release, which was made available to the public. The Proposing Release included the IRFA and solicited comments on it.

A. Reasons for, and Objectives of, Amendments

Proxy voting decisions may play an important role in maximizing the value of a fund's investments for its shareholders. Requiring funds to disclose specific proxy voting information could enable shareholders to make an informed assessment as to whether funds are utilizing proxy voting for the benefit of fund shareholders. We are adopting these amendments because we believe that requiring management investment companies to disclose their proxy policies and procedures as well as voting records will result in greater transparency for fund shareholders regarding the overall management of their investments. We also believe it is possible to achieve this improved disclosure efficiently at minimal cost because of recent advances in technology, such as the Internet.

B. Significant Issues Raised by Public Comment

No comments specifically addressed the IRFA. However, a few commenters asserted that the proposed amendments that would require disclosure of a fund's proxy voting record would have a negative impact on small entities.¹⁰⁴ These commenters noted that the loss of confidential voting that would result from the disclosure of proxy votes would raise the risk that portfolio company management might retaliate against a fund, and that this risk of retaliation would be disproportionately greater for small funds. One commenter

¹⁰¹ Letter of Mercer Bullard, Fund Democracy, LLC (Oct. 21, 2002).

¹⁰² Letter of Richard L. Trumka, Secretary-Treasurer, AFL-CIO, at 4 (Dec. 6, 2002).

¹⁰³ Because closed-end funds do not offer their shares continuously, and are therefore generally not required to maintain an updated SAI to meet their obligations under the Securities Act of 1933, they will be required to disclose their proxy voting policies and procedures in their annual reports on Form N-CSR.

¹⁰⁴ See, e.g., Letter of Richard Mason, General Counsel, Mosaic Funds (Nov. 27, 2002); ICI Letter, *supra* note 55, at 16.