

Private Equity Regulatory Update – September 2021

September 30, 2021 | Client Update | 3-minute read

Below is our latest report on regulatory developments relating to private equity and investment management. In this issue, we discuss, among other things, recent industry and SEC updates.

Rules and regulations

[SEC proposes to enhance funds' proxy voting disclosure and to require disclosure of "say-on-pay" votes for institutional investment managers](#)

Industry update

[SEC statement on request for information and comments on broker-dealer and investment adviser digital engagement practices, related tools and methods, and regulatory considerations](#)

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[SEC brings "shadow trading" complaint](#)

Rules and regulations

SEC proposes to enhance funds' proxy voting disclosure and to require disclosure of "say-on-pay" votes for institutional investment managers

On September 29, 2021, the Securities and Exchange Commission (the SEC) proposed amendments to Form N-PX to enhance the information that mutual funds, exchange-traded funds, and certain other funds report regarding their proxy voting activity, to make such information easier for investors to analyze. For example, under the proposed rule, funds would be required to tie the description of each voting matter to the issuer's form of proxy and to categorize each matter by type to help investors identify voting matters and compare voting records. In addition, the proposed rule would require disclosure of the number of shares voted (or, if not known, the number of shares that were instructed to be cast) and the number of shares that were loaned and not recalled. The proposed rule would also require a fund to use a structured data language for such disclosures, and to provide its voting record on (or through) its website, to facilitate investors' access to and analysis of the fund's voting record.

In addition, the SEC's proposal would require institutional investment managers subject to Section 13(f) reporting requirements to disclose how they voted on executive compensation (i.e., "say-on-pay") matters.

- See a copy of the [proposing release](#)

Industry update

SEC statement on request for information and comments on broker-dealer and investment adviser digital engagement practices, related tools and methods, and regulatory considerations

On August 27, 2021, the SEC published a request for information and public comment regarding the use of new and emerging technologies by financial industry firms, including broker dealers and investment advisers. Consistent with prior statements, SEC Chair Gary Gensler noted that the staff will be focused primarily on protecting investors engaging with technologies that use digital engagement practices.

For further information, please see Davis Polk's client update [here](#), which includes a summary of the request.

Litigation

SEC brings "shadow trading" complaint

On August 17, 2021, the SEC filed a complaint in the United States District Court for the Northern District of California against Matthew Panuwat (Panuwat), a former executive of a biopharmaceutical company, for alleged insider trading violations. According to the SEC complaint, in the course of his employment, Panuwat learned that his employer was a potential acquisition target by larger pharmaceutical companies, and received presentations from investment banks regarding which other public companies in his industry bankers believed to be comparable to his employer. The SEC alleges that Panuwat understood that large pharmaceutical companies were interested in acquiring similar companies and that a relatively small number of such companies were available for acquisition. Upon learning that his employer was to be acquired by a larger pharmaceutical company at a significant premium, Panuwat allegedly purchased out-of-the-money options of another smaller pharmaceutical company comparable to his employer, on the expectation that its share price would increase when the offer for his employer was publicly disclosed. Panuwat allegedly earned over \$100,000 by executing these trades ahead of the acquisition announcement. The case, which is contested, raises the novel question of whether employees have a duty not to use information about their own company to trade the stock of a different company.

- See a copy of the [Panuwat complaint](#)
- See a copy of the [SEC press release](#)