## > Client Alert

# Recent SEC Guidance Regarding Proxy Voting Encourages Asset Managers to Revisit Policies and Disclosures

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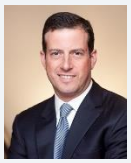

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The SEC recently adopted amendments to proxy voting rules that have codified the Commission's long-standing view that voting positions recommended by proxy advisory firms constitute a "solicitation" and thus formally subject those firms to the anti-fraud provisions of the proxy voting rules. The amendments also affect how investment advisers should consider and act on those recommendations.

One of the expressed intents of the amendments was to improve access to information in the marketplace. Because investment advisers will have this greater access to information, the SEC issued guidance to investment advisers regarding their proxy voting obligations under the Investment Advisers Act. Investment advisers may accordingly need to amend their policies and procedures pertaining to how they act upon the advice of the proxy advisory firms, and to improve disclosures to investors to reflect the concepts discussed by the SEC in its guidance.

Rule 206(4)-6 requires an investment adviser that votes proxies on behalf of its clients to implement and adopt policies and procedures that are reasonably designed to ensure that it votes client securities in the best interest of its clients and to fully disclose any conflicts of interest to which the investment adviser is subject.

There are several ways that investment advisers might utilize the services of proxy advisory firms such as ISS and Glass Lewis. Some investment advisers will simply and automatically act in accordance with the recommendations from their proxy advisory firms. Others will permit the proxy advisory firm to pre-populate electronic voting slates for them, or even execute the votes themselves. In its guidance, the SEC cautioned that investment advisers must be mindful of additional information that becomes public after receiving the recommendation or the slate of pre-populated votes, as can happen in connection with a contested slate of nominees or a controversial proposal. Without independently assessing all of the information, the SEC suggested, the investment adviser might not be acting in its clients' best interest and thus violate its fiduciary duties.

The SEC also discussed how relationships with proxy advisory firms are disclosed to investment advisers' clients and investors. Investment advisers should consider how they have disclosed and agreed with clients on the scope of responsibilities that the investment adviser has with respect to voting, as well

as providing sufficiently specific disclosure in the Form ADV where required. In the event that an investment advisor relies on a proxy advisory firm to recommend how to vote or to actually undertake votes on its behalf, specific disclosures about the arrangement, including any applicable conflicts of interest, must be made to investors.

Among other things, investment advisers should take this opportunity to re-evaluate how they vote client securities and whether their arrangements with advisory clients are sufficiently considered with their proxy advisory firms. Different clients may have different needs and conflicting interests that could impact how securities are voted. For example, it might be appropriate for an investment adviser to vote a security in a different way for a client that pursues a socially responsible mandate than for a client that does not have that objective. The investment adviser's proxy advisory firm should be aware of these specifically tailored needs and make recommendations accordingly.

Investment Advisers should also revisit their relationships with proxy advisory service providers to consider how situations would be handled when additional information becomes available between a recommendation and the deadline submission for a vote. It would also be worthwhile to conduct periodic due diligence on proxy advisory firms to ensure that investment advisers are acting in their clients' best interest. For example, learning how proxy advisory firms intend to update their own policies and procedures in light of the recent amendments will be important in assessing the quality of the service provider. In addition, investment advisers should take the time to verify whether the proxy advisory firm has made any historical factual errors while making prior recommendations and how they have handled any such errors, as part of ongoing due diligence.

Finally, as part of an investment adviser's annual 206(4)-7 review, we would recommend documenting any steps that are taken to ensure that appropriate disclosures regarding proxy advisory firms are made to investors and that policies and procedures are updated to be consistent with the SEC's expectations.