

SEC Supplements Guidance Relating to Proxy Voting Responsibilities of Investment Advisers

August 4, 2020

On July 22, 2020, the Securities and Exchange Commission (the “SEC”) published supplemental guidance (the “Supplemental Guidance”) regarding the proxy voting responsibilities of investment advisers under the Investment Advisers Act of 1940 (the “Advisers Act”).¹ The Supplemental Guidance, which follows prior guidance issued in 2019 regarding investment advisers’ proxy voting responsibilities (the “Prior Guidance”),² was published concurrently with the SEC’s final amendments to rules governing proxy solicitations under the Securities Exchange Act of 1934 (the “Amendments”).³

The Amendments are intended to provide issuers with access to proxy advisory firms’ recommendations in a timeframe that would allow such issuers to provide shareholders with additional material information in advance of the proxy submission deadline. The Supplemental Guidance is intended to assist an investment adviser that uses a proxy advisory firm’s services to (i) populate a client’s votes with recommendations based on that client’s voting instructions (“pre-population”) and/or (ii) automatically submit a client’s votes (“automated voting”) in assessing how and whether to consider any such additional information as well as address other disclosure obligations and considerations that may arise in an investment adviser’s use of a proxy advisory firm’s services.

In addition to considering the Prior Guidance, the Supplemental Guidance discusses that an investment adviser should consider whether its policies and procedures address circumstances where the investment adviser has become aware that an issuer intends to file, or has filed, additional soliciting materials with the SEC after the investment adviser has received the proxy advisory firm’s voting recommendation but before the submission deadline. To the extent such additional information is filed sufficiently in

¹ *Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, Release No. IA-5547 (July 22, 2020).

² *Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers*, Release No. IA5325 (Aug. 21, 2019), 84 FR 47420 (Sept. 10, 2019). For more information on the previous guidance, please refer to our Client Update, available [here](#).

³ *Exemptions from the Proxy Rules for Proxy Voting Advice*, Release No. 34-89372 (July 22, 2020). For more information on the final amendments, please refer to our Client Update, available [here](#).

advance of the deadline and such information would reasonably be expected to affect the investment adviser's voting determination, the investment adviser would need to consider such additional information prior to exercising voting authority in order to demonstrate that it is voting in its client's best interest.

Because an investment adviser has an obligation to make full and fair disclosure of all material facts relating to the advisory relationship, which includes the disclosure of material facts related to the exercise of voting authority with respect to client's securities, an investment adviser that uses automated voting should disclose sufficiently specific information in order for a client to be able to understand the role of any voting execution services in the investment adviser's exercise of its voting authority. The Supplemental Guidance notes that such disclosure includes making available the investment adviser's policies regarding (i) the extent to which automated voting is used and (ii) under what circumstances the service is employed in a situation when additional materials are filed by the issuer prior to the submission deadline. Accordingly, an investment adviser should carefully review its disclosures to ascertain whether it has provided its clients with the disclosure necessary for the clients to provide informed consent with respect to the use of automated voting as a means of exercising voting authority. An investment adviser should also consider its obligations under Rule 206(4)-6 under the Advisers Act and Form ADV as they relate to the investment adviser's voting policies and procedures.

Finally, because the timing of pre-population and automated voting may result in proxy advisory firms possessing non-public material information regarding how an investment adviser intends to vote a client's securities, the investment adviser should consider reviewing its agreements with any proxy advisory firms to determine whether the agreements would permit the proxy advisory firms to use this information in a manner that would not be in the best interest of the investment adviser's clients.

The effective date of the Supplemental Guidance is the date of publication in the Federal Register.

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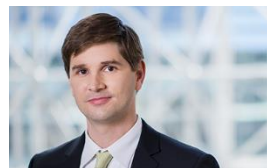
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