

## SEC Divisions Issue Guidance Regarding Proxy Voting

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In June 2014, the staff of the **Divisions of Investment Management and Corporation Finance** of the SEC jointly published **Staff Legal Bulletin No. 20** (SLB 20) regarding (1) investment advisers' responsibilities in voting client proxies and retaining proxy advisory firms and (2) the availability and requirements of two exemptions from the Exchange Act proxy rules. SLB 20 consists of questions and answers regarding proxy voting responsibilities and exemptions in order to assist investment advisers and proxy advisory firms, respectively, in making changes to their current systems and processes in advance of next year's proxy season. In particular, SLB 20 notes the following:

- Investment advisers and their clients do not need to agree that the adviser will undertake all of the proxy voting responsibilities. Rule 206(4) 6 under the Advisers Act only requires investment advisers to vote in accordance with their client's wishes, including not voting at all, only voting on some matters, or voting in favor of management or certain proponents.
- Where the client gives the investment adviser the authority to vote, the investment adviser must take steps to demonstrate that proxy votes are cast in accordance with clients' best interests and the adviser's procedures. SLB 20 suggests periodically sampling proxy votes to review whether they comply with the investment adviser's proxy voting policies and review, at least annually, the adequacy of proxy voting policies and procedures.

- An investment adviser choosing to rely on recommendations of a proxy advisory firm should ascertain whether the proxy advisory firm has the capacity and competency to make voting recommendations based on materially accurate information. If an investment adviser finds that a proxy advisory firm's recommendation is based on a material factual error (for example, as a result of a supplemental proxy filing by the issuer), the adviser should take reasonable steps to investigate the error and seek to determine whether the proxy advisory firm is taking reasonable steps to reduce similar errors in the future.
- An investment adviser that retains a proxy advisory firm should adopt policies and procedures reasonably designed to provide sufficient oversight of the proxy advisory firm, and to identify and address the conflicts of the proxy advisory firm (which, as discussed below, will be disclosed by the proxy advisory firms), in order to ensure that the investment adviser, in acting based on the proxy advisory firm, continues to vote proxies in the best interests of its clients.
- A proxy advisory firm is subject to the Exchange Act proxy rules when it engages in "solicitation," which includes "the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy."
- SLB 20 describes certain exemptions available to proxy advisory firms from the filing and disclosure requirements of the Exchange Act proxy rules. To rely on certain of these exemptions, a proxy advisory firm must disclose significant relationships or material interests. Where a significant relationship or material interest is found, the proxy advisory firm must disclose the conflict, including the scope of the relationship or interest and steps taken to mitigate the conflict. Rule 14a 2(b)(3) under the Exchange Act imposes an affirmative duty to disclose these significant relationships or material interests to the recipient of a proxy advisory firm's advice. Providing the information "upon request" will not satisfy the rule.

SLB 20 is available [here](#).

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