

Guidance for Investment Advisers Using Proxy Advisory Firms

September 16, 2014

A recent SEC Staff Legal Bulletin provides important guidance for investment advisers that use proxy advisory firms in voting clients' securities. Nevertheless, the Bulletin (dated June 30, 2014) leaves much unresolved. For years, critics have argued that proxy advisory firms have too much influence and raise conflict of interest and other regulatory issues that have been inadequately addressed (see "SEC Radar Targets Proxy Voting Advice," *Expect Focus*, Vol. I, Winter 2012).

Although some have envisioned that the SEC would take formal action to impose significant additional regulatory requirements, the Bulletin merely expresses current views of the SEC staff and is not binding on the Commission. While the Bulletin, dated June 30, 2014, sets forth numerous practices that investment advisers may wish to follow, the practices would generally involve refinements rather than marked changes in investment advisers' current operations. Moreover, the staff frames most of these practices as suggestions for consideration, not things investment advisers "must" or even "should" do. The staff's stronger statements in the Bulletin include guidance that investment advisers "should":

- review at least annually the adequacy of their proxy voting policies and procedures;
- ascertain that proxy advisory firms that they retain have the capacity (a) to adequately analyze proxy issues and, (b) to make any voting recommendations on the basis of accurate information;
- reasonably assure themselves that any proxy advisory firms that they determine to have based recommendations on inaccurate information take responsive actions that are reasonably designed to prevent recurrences; and
- implement measures reasonably designed (a) to provide sufficient oversight of proxy advisory firms to ensure that the investment advisers meet their proxy voting obligations to clients and (b) to identify and address the relevant conflicts of interest to which the proxy advisory firms can be subject.

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