

SEC Issues Guidance Regarding Proxy Voting Responsibilities of Investment Advisers

September 18, 2019 | Client Update

On August 21, 2019, the SEC issued guidance to assist investment advisers in fulfilling their proxy voting responsibilities (the “**Guidance**”) and an interpretation that proxy voting advice provided by proxy advisory firms generally constitutes a “solicitation” subject to the federal proxy rules (the “**Interpretation**”).

The Guidance:

- May disappoint some companies and investors by not stating generally that an investment adviser with voting authority need not vote in every instance;
- Articulated significant compliance and due diligence burdens that investment advisers will need to consider if they have authority to vote proxies on behalf of their clients, particularly if they utilize proxy advisory firms;
- Will generally require investment advisers with voting authority to review their policies and procedures in light of the positions set forth in the Guidance; and
- May cause investment advisers to consider whether they want to continue to have responsibility for voting proxies for clients or whether they would prefer to restructure their arrangements with clients to eliminate such responsibility or reduce their regulatory burden in this regard.

The Interpretation:

- Reiterated the SEC’s long-held view that a proxy advisory firm’s voting recommendations are proxy solicitations for purpose of the SEC’s proxy solicitation rules; and
- Confirmed that, as such, a proxy advisory firm’s voting recommendations are subject to the proxy solicitation rules’ anti-fraud provisions.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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