

In Advance of Roundtable, SEC Withdraws Letters on Investment Advisers' Reliance on Proxy Advisory Firms for Voting Recommendations

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The SEC issued [a statement today](#) announcing that its Division of Investment Management has rescinded the letters issued in 2004 to ISS and Egan-Jones, effective immediately.

The letters have been criticized to have unintentionally resulted in the endorsement of investors using proxy advisory firms in making proxy voting recommendations, in order to address potential conflicts of interests by investment advisers exercising their fiduciary obligations when voting proxies. In them, the SEC staff stated that the recommendations of a third party, independent of an investment adviser, may “cleanse” the adviser’s vote from conflict, as we explained [in a post](#) more than five years ago.

Concern over the perceived increased influence of proxy advisory firms has recently intensified, with the passage of the Corporate Governance Reform and Transparency Act of 2017 (H.R. 4015) by the House in late 2017, aimed squarely at proxy advisory firm registration and practices, including providing draft reports to all companies. In May of this year, six senators on the Banking, Housing and Urban Affairs Committee sent letters to ISS and Glass Lewis with questions regarding their exemption from SEC proxy rules, criticisms about accuracy, and disclosures of conflict of interest. ISS’ [letter in response](#) cites to Staff Legal Bulletin 20 (SLB 20), SEC staff guidance on the proxy voting responsibilities of investment advisers and, just as importantly, the availability of exemptions from the proxy rules for proxy advisory firms.

The SEC statement made today indicated that the SEC is also looking for feedback on SLB 20 at the Roundtable on the Proxy Process, which we [described here](#) and is expected to be held in November 2018. In developing the agenda for the Roundtable, the SEC staff has been considering whether prior staff guidance about investment advisers’ responsibilities in voting client proxies and retaining proxy advisory firms should be modified, rescinded or supplemented, which led to the letters being withdrawn.

The SEC stated that it issued the notice today regarding the letters in order to facilitate the discussion at the Roundtable, and wants to hear from various stakeholders before making future recommendations to the Commission with respect to proxy advisory firms. The proposed agenda includes a range of topics, and this may be the clearest indication that the SEC is seriously interested in reforms.

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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