By Thomas D. Giachetti

How New SEC Proxy Voting Rules Affect Advisors

Revised amendments mean advisors who proxy vote or work with proxy advisors need to be careful.

Recent changes on proxy voting by the Securities and Exchange Commission impact advisors to the extent on how they deal with the process through their firm, but also if they use a proxy advisory firm.

The SEC's *Supplement to Commission Guidance regarding Proxy Voting Responsibilities of Investment Advisers* became effective on Sept. 3, 2020. Additionally, the SEC final rules governing proxy advisors intended to improve the accuracy and transparency of information provided by those firms, will go into effect on Nov. 2, 2020 with a required compliance date of Dec. 1, 2021, for certain provisions and full compliance by the 2022 proxy season.

The SEC expects that the amendments will provide issuers, among other things, with access to the proxy advisory firms' recommendations in a timely manner and will allow issuers to share any additional information with shareholders that may be material to their voting decisions.

My colleague Trina Glass discussed these final rules and how they affect advisors in more detail.

PRE-POPULATION OF VOTING PROXIES

Pre-population and automated voting occur before the submission deadline for proxies to be voted on at a shareholder meeting. With the new rule, advisors that pre-populate clients' votes must determine whether an issuer plans to file or has already filed additional materials reflecting its views regarding the voting recommendations.

This should be done as part of an advisor's reasonable due diligence into

matters on which it votes (or when the advisor uses a proxy voting advisory firm or automated voting process to assist it with the process).

Some steps that an advisor can take to demonstrate that it (or the proxy voting firm) is making voting determinations in a client's best interest include, but is not limited to:

• Review any policies and procedures to determine whether the advisory firm or proxy firm have the ability to react to or address circumstances where the advisor becomes aware that an issuer intends to file or has filed additional soliciting materials with the SEC *after* the advisor has made its determination and/or has received the proxy advisory firm's voting recommendations, but *before* the submission deadline;

• Determine whether the advisor or the proxy advisory firm may obtain nonpublic information about how a proxy will be voted, and then choose whether the advisor will be able to use that nonpublic information in a manner that would conflict with or not be in the best interest of the advisor's clients

DISCLOSURE OBLIGATIONS

Advisors are required, as part of its duty of loyalty to clients, to make full and fair disclosure of all material facts relating to the advisory relationship including, material facts related to the exercise of its proxy voting authority. Advisors that use automated voting should disclose:

• The extent of the advisor's use of automated voting and under what circumstances it will use it;

• How the advisor's policies and procedures address the use of automated voting when the advisor becomes aware that an issuer intends to file or has already filed additional soliciting materials with the SEC regarding a matter to be voted on prior to the submission deadline for proxies; and

• Provide a client with information to understand the role of automated voting in the advisor's exercise of its voting authority and provide informed consent on use and scope of automated voting.

The proxy amendments and the guidance, in part, are focused on ensuring advisors act "in a manner consistent with their fiduciary obligations" and that they provide investors with enough information to make informed decisions.

The new requirements may impact an advisor's continued use of electronic proxy voting and the use of proxy advisor voting firms due to the amendments and the corresponding anticipated increased cost of compliance. **IA**

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