

SEC Revises Proxy Voting Guidance

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As we discussed in an earlier alert,¹ on July 22, 2020, the SEC granted proxy advisory firms certain exemptions under the federal proxy rules, conditioned on — among other things — a requirement for proxy advisory firms to provide their recommendations to the subject public companies and then to provide their clients an “efficient and timely means”² of staying informed of any written responses received from those public companies. The SEC also revised its 2019 proxy voting guidance³ for investment advisers to address this additional source of information on a contested proxy situation. The supplemental guidance keys in on a situation where a proxy advisory firm’s electronic system “pre-populates” a client’s votes and automatically submits those votes in advance of the deadline; in particular, whether that kind of arrangement satisfies an adviser’s fiduciary duty in general, and in situations where there has been a public company response to the initial proxy advisory firm’s recommendation.

While the SEC’s goal was “to assist investment advisers in assessing how to consider the additional information that may become more readily available to them as a result of these amendments,” the actual release did not provide much in the way of concrete suggestions and was more a warning to provide additional disclosures, recommending that advisers consider disclosing to clients (i) “the extent of that use and under what circumstances it uses automated voting”; and (ii) “how its policies and procedures address the use of automated voting in cases where it becomes aware before the submission deadline for proxies to be voted at the shareholder meeting that an issuer intends to file or has filed additional soliciting materials with the Commission regarding a matter to be voted upon.”

This article appeared in the August 2020 edition of SRZ’s Private Funds Regulatory Update. To read the full Update, [click here](#).

¹ “SEC Issues Final Rule Regulating Proxy Voting Advice,” *SRZ Alert*, July 28, 2020, [available here](#).

² See SEC Final Rule, Exemptions from the Proxy Rules for Proxy Voting Advice (July 22, 2020), page 104, [available here](#).

³ See SEC Guidance, Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers (July 22, 2020), [available here](#). The broader 2019 “Proxy Guidance” that was amended is addressed in this [SRZ Memorandum](#).