(A) To approve any transaction specified in §230.145(a); or
(B) By any person or group of persons for the purpose of opposing a solicitation subject to this regulation by any other person or group of persons.

4. Amend §240.14a–9 by adding paragraph e. to the Note to read as follows:

§240.14a–9 False or misleading statements.

*e* *e* *e* *e* *e*

Note: * * * * *

e. Failure to disclose material information regarding proxy voting advice covered by §240.14a–1(b)(1)(iii)(A), such as the proxy voting advice business’s methodology, sources of information, or conflicts of interest.

By the Commission.


Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–23637 Filed 9–1–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 276

[Release No. IA–5547]

Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Guidance.


FOR FURTHER INFORMATION CONTACT: Thanhakam Varghese, Senior Counsel; or Holly Hunter-Ceci, Assistant Chief Counsel, at (202) 551–6825 or IMOCO@sec.gov; Chief Counsel’s Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.


I. Introduction

The Commission previously issued guidance discussing how the fiduciary duty and rule 206(4)–6 under the Advisers Act relate to an investment adviser’s exercise of voting authority on behalf of clients and also provided examples to help facilitate investment advisers’ compliance with their obligations in connection with proxy voting. We are supplementing this guidance in light of information gained in connection with our ongoing review of the proxy voting process and our related regulations, including the amendments to the proxy solicitation rules under the Exchange Act that we are issuing at this time.

We expect that the Exchange Act amendments adopted in Release No. 34–89372 will result in improvements in the mix of information that is available to investors and material to a voting decision. In particular, we expect issuers will have access to proxy advisory firm recommendations in a timeframe that will permit those issuers to make available to shareholders additional information that may be material to a voting decision in a more systematic and timely manner than they could previously. We also expect that the amendments will result in the availability of that additional information being made known to proxy advisory firms and their clients in a timely manner, including because proxy advisory firms, as a condition to the availability of the exemptions in 17 CFR 240.14a–2(b)(1) and (b)(3), must adopt policies and procedures that are reasonably designed to provide investment advisers and other clients with a mechanism by which they can reasonably be expected to become aware of that additional information prior to making voting decisions. Accordingly, we are providing supplementary guidance 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, including in circumstances where the investment adviser utilizes a proxy advisory firm’s electronic vote management system that “pre-populates” the adviser’s proxies with suggested voting recommendations and/or for voting execution services. The supplementary guidance also addresses disclosure obligations and considerations that may arise when investment advisers use such services for voting.

II. Supplemental Guidance Regarding Investment Advisers’ Proxy Voting Responsibilities

Question 2.1: In some cases, proxy advisory firms assist clients, including investment advisers, with voting execution, including through an electronic vote management system that allows the proxy advisory firm to: (1) Populate each client’s votes shown on the proxy advisory firm’s electronic voting platform with the proxy advisory firm’s recommendations based on that client’s voting instructions to the firm (“pre-population”); and/or (2) automatically submit the client’s votes to be counted (“automated voting”). Pre-population and automated voting generally occur prior to the submission deadline for proxies to be voted at the shareholder meeting. In various circumstances, an investment adviser, in the course of conducting a reasonable investigation into matters on which it votes, may become aware that an issuer that is the subject of a voting recommendation intends to file or has filed additional soliciting materials with the Commission setting forth the issuer’s views regarding the voting recommendation. These materials may or may not reasonably be expected to affect the investment adviser’s voting.
In its prior guidance, the Commission also discussed how an investment adviser and its client may agree on the scope of the investment adviser's authority and responsibilities to vote proxies on behalf of that client. The Commission explained that an investment adviser may agree with its client to the scope of voting arrangements but that scoping the relationship requires the investment adviser to provide full and fair disclosure and the client to provide informed consent. Differences in agreements between investment advisers and their clients as to the scope of the advisory relationship may result in a variety of arrangements for voting client securities, which may address, for example, parameters around the method of voting execution.

An investment adviser also has an obligation, as a result of its duty of loyalty to clients, to make full and fair disclosure to its clients of all material facts relating to the advisory relationship. These include material facts related to the exercise of voting authority with respect to client securities. The Commission recently explained that, “[i]n order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.” Further, rule 206(4)-6 and Form ADV require an investment adviser to describe to clients its voting policies and procedures.

In light of the above, we believe that an investment adviser that uses automated voting should consider disclosing: (1) The extent of that use and under what circumstances it uses automated voting; and (2) how its policies and procedures address the use of automated voting in cases where it becomes aware after 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. In addition, an investment adviser should also consider whether its policies and procedures are reasonably designed to address these disclosures. Depending on the facts and circumstances, these disclosures may be necessary for the investment adviser to provide sufficiently specific information so that a client is able to understand the role of automated voting in the investment adviser’s exercise of voting authority. In those cases, the client may not, without this disclosure, have sufficiently specific information to provide informed consent with respect to the use of automated voting as a means of exercising voting authority either (a) for purposes of agreeing to the scope of the relationship or (b) as it relates to the investment adviser’s obligation, under its duty of loyalty, to provide full and fair disclosure relating to the advisory relationship. In this regard, an investment adviser should also consider its obligations under rule...
206(4)–6 and Form ADV as they relate to the investment adviser’s voting policies and procedures. Accordingly, an investment adviser should carefully review its disclosures with respect to these matters in order to ascertain whether it has provided its clients with the disclosure necessary for the clients to provide informed consent with respect to the use of automated voting as a means of exercising voting authority and for the adviser to satisfy its obligations under rule 206(4)–6 and Form ADV.

III. Other Matters
Pursuant to the Congressional Review Act,\textsuperscript{15} the Office of Information and Regulatory Affairs has designated this guidance as not a "major rule," as defined by 5 U.S.C. 804(2).

List of Subjects in 17 CFR Part 276
Securities.

Amendments to the Code of Federal Regulations
For the reasons set out above, the Commission is amending title 17, chapter II, of the Code of Federal Regulations as set forth below:

\textsuperscript{15} 5 U.S.C. 801 et seq.
Subject Release No. Date Federal Register volume and page

Supplement to Commission Guidance Regarding the Proxy Voting Responsibilities of Investment Advisers. IA–5547 September 3, 2020 [Insert FR citation of publication]

By the Commission.


Vanessa A. Countryman,
Secretary.

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