



CONSTELLATION

ADVISERS, LLC

REGULATORY NOTICE: 20-01

Answers to the 5 Most Frequent Questions

About the SEC's Proxy Voting Guidance

The SEC has adopted interpretive guidance (the “**Proxy Voting Guidance**”) regarding proxy voting responsibilities. The Proxy Voting Guidance provides Registered Investment Advisers (“**RIAs**”) with information that would be helpful in crafting their proxy voting policies. Additionally, the SEC adopted a separate interpretation regarding advice offered to RIAs by proxy advisory firms (“**Proxy Adviser**”). The information provided below reflects the summarized opinions and understandings of Constellation and is not intended to be legal advice and should not be relied upon without conducting further independent analysis.

1. What is the Proxy Voting Rule?

Investment Advisers Act Rule 206(4)-6 (the “**Proxy Voting Rule**”) requires RIAs that exercise voting authority with respect to client securities to:

- adopt and implement written policies and procedures reasonably designed to confirm the RIA votes client securities in the best interest of clients and must address how actual or potential material conflicts between the RIA's interests and those of its clients are resolved;
- disclose to clients how they may obtain information regarding how the adviser voted proxies with respect to the clients' securities; and
- describe to clients the RIA's proxy voting policies and procedures, and (upon request) furnish a copy of the policies and procedures to the requesting client.

2. Does Proxy Voting Authority Have to be Expressly Granted to the Adviser?

No. RIAs that have implicit as well as explicit voting authority must comply with the Proxy Voting Rule. This occurs where the RIA's voting authority is implied by an overall delegation of discretionary authority even where the advisory contract is silent on voting proxies. The Proxy Voting Rule, however, does not apply to advisers that do not have authority to vote the proxies or to companies soliciting proxies.

3. Why Did the SEC Issue the Proxy Voting Guidance?

The SEC issued guidance to assist investment advisers in fulfilling their proxy voting responsibilities, particularly when they use the services of a Proxy Adviser. Based on the SEC's Proxy Voting Guidance, RIAs should be cognizant of the Proxy Adviser's voting guidelines and the potential for negative voting recommendations from Proxy Advisers.

The Proxy Voting Guidance suggests that RIAs can satisfy their fiduciary duties of care and loyalty and obligations to act in their clients' best interests, in part, through careful oversight by monitoring and analyzing the methodology and processes of Proxy Advisers, including their engagement with issuers and procedures to address errors.

4. What are My Key Risk Areas?

Risks include procedures adopted by Proxy Advisers that may result in voting recommendations being issued closer to meeting dates, providing RIAs with less time to respond, and creating opportunities to sway stockholder votes. Further, RIAs should consider adopting additional policies to confirm that their use of Proxy Adviser recommendations is consistent with their fiduciary duties to clients.

5. What are the main takeaways for Constellation Clients?

- Adopt and implement written policies and procedures based on a reasonable understanding of client objectives.
- Make voting determinations in your client's best interest and in accordance with internal proxy voting policies and procedures by conducting an investigation reasonably designed to confirm that determinations are not based on materially inaccurate or incomplete information.
- Determine whether you can meet your fiduciary duty by having one uniform policy for all clients or multiple policies tailored to each client or type of client.
- Sample ballots cast on behalf of clients as part of the adviser's annual review of its policies and procedures to verify consistency.
- If planning to retain a Proxy Adviser, confirm that the firm has:
 - exhibited the ability to adequately analyze matters for which the RIA is responsible for voting;
 - an effective process for seeking timely input from issuers and the Proxy Adviser's clients;
 - adequately disclosed its methodology for formulating voting recommendations; and
 - policies and procedures for identifying and addressing conflicts of interest.
- Understand that according to the Proxy Voting Guidelines, proxy voting advice generally constitutes a "solicitation" within the meaning of Exchange Act Rule 14a-1.^[1] Also, proxy voting advice is subject to the anti-fraud provisions of the Proxy Rule. If you plan to engage a Proxy Adviser^[2], you should consider the following:
 - review existing policies and practices in advance of the 2020 annual meeting and proxy season;
 - work with the Proxy Adviser to shape the nature and scope of your voting authority through full and fair disclosure and informed consent;
 - request disclosure from the Proxy Adviser regarding methodologies used to formulate its voting recommendations, sources of data, and any potential conflicts of interest between the Proxy Adviser and the issuers;
 - conduct ongoing due diligence to confirm the Proxy Adviser is satisfying its duty to provide advice and make voting determinations in the best interest of your client(s); and

- Assess pre-populated votes shown on the Proxy Adviser's electronic voting platform before ballots are cast.
- Contact Constellation Advisers for further guidance and assistance.

[1] The SEC has also placed a renewed emphasis on potential liability of proxy advisory firms for misleading material statements or omissions in their solicitation communications. This new focus may enhance the level of care, transparency and responsiveness of proxy advisory firms, and the specific recommendations for disclosures that proxy advisory firms should consider providing to avoid potential liability. More is yet to be determined on whether the focus will enable RIAs to raise concerns about proxy advisory firms' recommendations and any inaccurate information on which recommendations are based.

[2] On November 5, 2019, the SEC issued proposed rule amendments for Proxy Voting Advice "to enhance the quality of the disclosure about material conflicts of interest that proxy voting advice businesses provide to clients." Although the proposed rule's 60-day comment period is over, the SEC has not issued any additional guidance.

Constellation Advisers | 1212 Avenue of the Americas, 6th Floor, New York, NY 10036

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