

[Securities Regulation Daily Wrap Up, INVESTMENT ADVISERS—IM division rescinds relief for advisers relying on proxy advisory firms, \(Sept. 13, 2018\)](#)

Securities Regulation Daily Wrap Up

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In an Information Update, the SEC's Division of Investment Management announced its withdrawal of two no-action letters providing guidance for investment advisers relying on recommendations from third-party proxy advisers when voting advisory clients' proxies. According to the [update](#), the staff recently reexamined the 2004 letters taking into account developments since that time and determined to withdraw these letters to facilitate discussion at the upcoming Proxy Process Roundtable, expected to be held in November 2018.

No-action relief. The two no-action letters ([Institutional Shareholder Services](#) (September 15, 2004) and [Egan-Jones Proxy Services](#) (May 27, 2004)) provided guidance regarding the circumstances under which a third party providing proxy advice may be considered independent under Investment Adviser Act Rule 206(4)-6. The letters noted that, even in cases where a proxy vote coincides with the interests of the investment adviser, a vote is not necessarily in conflict if the investment adviser acted on the advice of a third party that followed a pre-determined policy.

However, the staff explained, the investment adviser should take measures to ensure that the third party is independent of the investment adviser in that the third party does not have any material relationships with the adviser and that the proxy firm has the capacity to analyze proxy issues and make recommendations in an impartial manner in the best interests of clients. The staff recommended requiring a proxy service to disclose any relationships with issuers whose proxies are subject to a vote by the investment adviser and stressed the importance of funds providing their clients with disclosure on how they guarantee that third-party advisers are independent and how conflicts will be addressed.

Relief rescinded. According to the update, in developing the agenda for the roundtable, the staff began considering whether prior guidance regarding advisers' responsibilities in voting proxies and retaining proxy advisory firms should be modified or rescinded. After considering industry changes since 2004, the IM staff determined to withdraw these letters, effective immediately.

The update notes the staff looks forward to comments from stakeholders at the upcoming roundtable on the issues addressed in the prior no-action letters, as well as with regard to the guidance in Staff Legal Bulletin No. 20, which also addresses advisers' responsibilities in voting client proxies and retaining proxy advisory firms. The staff also notes that the update does not constitute staff legal guidance and is not a SEC rule, regulation, or statement.

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