

Public Statement

Statement at Open Meeting on Commission Guidance Regarding Proxy Voting and Proxy Voting Advice



Commissioner Hester M. Peirce

Aug. 21, 2019

I want to thank Dalia Blass, Bill Hinman, and their staffs, as well as the Office of General Counsel for their hard work on today's releases. I am pleased that the Commission is considering guidance related to proxy voting, an area of great importance to our capital markets. I like to remind people that we are not a law enforcement agency, but a regulatory agency. We fulfill our mission primarily by establishing an effective regulatory framework, helping well-meaning market participants clearly understand what the rules are, and assisting firms and individuals as they try to determine what compliance looks like given their particular facts and circumstances. The guidance we are voting on today is a good example of how the Commission can assist market participants—in this case investment advisers and proxy advisory firms—who are trying to serve their clients effectively and in a manner that complies with our rules.

The investment adviser's fiduciary duty to its clients stands at the center of what we are doing today. An adviser's fiduciary duty is not a set of rules, but a principled approach to its dealings with its clients that takes shape in response to the unique needs and objectives of its clients. An asset manager with multiple fund clients, for example, must tailor its approach to the specific objectives of each fund it manages.

When an investment adviser undertakes to vote equity securities on behalf of a client, it does so as a fiduciary guided by the client's best interest. Exercising voting authority as a fiduciary does not mean that an adviser is required to pore over each matter for each client in order to decide how to vote. An adviser might determine that the best approach for a particular client is to follow a pre-set policy of, for example, not voting at all; voting with management on all except non-routine matters; or, where relevant, voting with shareholder proponents and against management or vice versa.

An adviser also may turn to a proxy advisory firm to assist in voting proxies. Doing so in no way diminishes the adviser's duty to serve its client's best interest. As today's guidance demonstrates, there are concrete steps that an adviser relying on a proxy advisory firm to handle administrative or substantive aspects of voting can take to ensure that it is fulfilling its fiduciary duty. These are common sense steps such as ensuring that the proxy advisor is following the adviser's instructions; disclosing and mitigating any conflicts of interest; using sound methodologies; employing qualified people; using good technology; and relying on current, accurate information to make its decisions.

As proxy advisory firms look to provide valuable services consistent with the proxy rules, they are contemplating these same issues. The guidance we are issuing today regarding the provision of proxy advice is designed to help proxy advisors think through their role in the proxy process. The proxy advice release

complements the guidance for advisers. Proxy advisory firms, by shedding light on what they do and how they do it, assist investment advisers in fulfilling their fiduciary duty to their clients.

Today's Commission guidance is a welcome departure from our past over-reliance on staff guidance in this area. While staff guidance has an important function for a regulatory agency confronting lots of one-off questions, when we have a message that is broadly applicable, that message should come from the Commission.

The guidance we are considering today will not live up to the dire expectations of some people who have had their ears pressed up against the Commission's door in recent weeks. As with other such listening exercises, discerning a clear message from muffled voices on the other side of the door is difficult and can lead to some misunderstandings. In issuing today's guidance, we are not building a new regulatory regime, but are explaining the contours of an existing one to help investment advisers and proxy advisors carry out their responsibilities. These guidance documents do not prescribe what investment advisers and proxy advisors must do to carry out their responsibilities, but they describe some things these firms might consider to help them accomplish those goals. The firms themselves bear the ultimate responsibility for compliance, and we look forward to our continued work with them and other market participants.

I support the staff's recommendations before us this morning and thank the Chairman and Commissioner Roisman for their thoughtful leadership as we take steps to improve the proxy process.