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ADAPTING TO CHANGE IN PROXY VOTING DUTIES OF INVESTMENT ADVISERS AND REGISTERED INVESTMENT COMPANIES

Registered investment advisers and registered investment companies hold, in the aggregate, a substantial amount of institutional proxy voting power on behalf of millions of investors and advisory clients. Investors and clients have traditionally delegated this proxy voting authority to advisers and investment funds, and deferred to their acumen in making voting decisions. Recently, however, investors and clients are seeking investment products and services that reflect more active expressions of voting preferences in corporate and social matters. Regulators have also taken note, with a renewed interest in the proxy voting practices of investment advisers and investment companies, both to enforce existing duties and to develop regulations that reflect evolving market practices. This article takes a fresh look at the current legal and regulatory framework for proxy voting by investment advisers and investment companies, highlights recent regulatory developments, and identifies topics investment advisers and investment companies should consider in implementing their proxy voting programs.

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SHAREHOLDER DEMOCRACY MEETS FIDUCIARY DUTY

Proxy voting is the primary means by which many shareholders exercise their right to vote on publicly traded company matters. Increasingly, investors are using the proxy voting process to promote activist initiatives, with causes ranging from requiring company reporting on workplace diversity and inclusion efforts to prohibiting a company from using certain pork suppliers due to animal welfare concerns. While any individual shareholder's voting power is relatively limited, registered investment advisers and investment companies hold a vast amount of institutional voting power, enabling them to influence the outcome of a wide variety of corporate actions, governance matters, and shareholder proposals. Investment advisers and fund sponsors have long been criticized by some investors for supporting public company management in voting decisions by overwhelming margins. Recently, certain firms are responding to this and other market trends by offering new products and strategies that cater to Environment, Social, and Governance ("ESG") factors or "impact" investing.[1] Many of these new products and

[1] The term "ESG" generally refers to a company's consideration of environmental, social, and governance factors; these factors vary by industry and are defined by materiality, that is, benchmarking a company's operations against ESG risks prevalent in or core to its operations. While these topics are beyond the scope of this article, investment advisers and funds that offer ESG-related products and services should be aware of

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