



Legal Risk Management Tip November 2006

Proxy Voting Policy Reminders

Proxy voting continues to be an area of interest in regulatory examinations. In light of recent regulatory enforcement actions, such as *In the Matter of Deutsche Asset Management, Inc.*,¹ and recently released SEC interpretive guidance statements, (e.g., soft dollar arrangements and proxy voting decision services),² firms must proactively evaluate their proxy voting policies and practices.

Since the Proxy Voting rule was adopted in January 2003, many advisory firms request that their clients (rather than the advisory firm) vote proxies for a variety of reasons. Clients' vote should be viewed by the advisory firm as an asset and therefore, the adviser's decision to not vote proxies must be in the clients' best interest. In accordance with the Rule,³ advisory firms who do vote proxies must adopt written policies and procedures individually tailored to the firm's clients and business model. The adviser's proxy voting policies must:

1. Set forth the strategies and guidelines used to determine their clients' vote;
2. Address how the firm is identifying and addressing material conflicts of interest;
3. Explain the circumstances, if any, where the adviser will not vote;
4. Provide what books and records are maintained on actual votes for client holdings; and
5. If a registered investment company, the process for filing N-PX annually for all voting decisions.

Advisers with voting authority often are faced with conflicts that exist because of a relationship with an issuer. Perhaps the firm provides advisory services to the issuer or a member of the proxy voting committee has a personal interest in the company (such as serving on its board). Just because there is a conflict doesn't necessarily mean that the firm should abstain from voting. Some solutions may be to have the conflicting member(s) abstain from participating in the voting decision, vote in accordance with an independent third-party service provider or vote by pre-determined guidelines as set forth in the firm's proxy voting policies and procedures.

If a third-party is used, perform due diligence to ensure that the service provider is truly independent and not conflicted. In addition, remember to ensure that the third party's recommendations are consistent with the adviser's position. Based on new SEC interpretative guidance, after January 1, 2007, make sure that your proxy voting service providers who assist in voting (not investment) decisions are paid in hard dollars. Consider providing 4th quarter training to traders and applicable firm committees to inform them of this regulatory change and any amendments to your existing proxy voting policies and practices.

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¹ *In the Matter of Deutsche Asset Management, Inc.*, Rel. No. IA-2160 (Aug. 19, 2003).

² *Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934*, Rel. No. 34-54165 (Jul. 18, 2006).

³ *Proxy Voting by Investment Advisers*, Rel. No. IA-2106 (Jan. 31, 2003).