

## Introduction

Effective March 10, 2003, the SEC adopted new rules under *section 206(4) of the Investment Advisers Act of 1940* that address an investment adviser's fiduciary obligation to its clients when the adviser has authority to vote their proxies. Therefore, in accordance with *SEC Release No. IA-2106*, the new rule requires an investment adviser that exercises voting authority over client proxies to adopt policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interests of clients, to disclose to clients information about those policies and procedures, and to disclose to clients how they may obtain information on how the adviser has voted their proxies. The new rule must also describe how the adviser addresses and resolves material conflicts between its interests and those of its clients with respect to proxy voting. The rule amendments also require advisers to maintain certain records relating to proxy voting. The rule and rule amendments are designed to ensure that advisers vote proxies in the best interest of their clients and provide clients with information about how their proxies are voted. The required compliance date for the new rule is August 6, 2003.

### 12.01 Voting Client Proxies

Under the Advisers Act, an adviser is a fiduciary that owes each of its clients "duties of care and loyalty" with respect to all services undertaken on the client's behalf, including proxy voting. The duty of care requires an adviser with proxy voting authority to monitor corporate events and to vote the proxies. To satisfy its duty of loyalty, the adviser must cast the proxy votes in a manner consistent with the best interest of its client and must not subrogate client interests to its own.

Therefore, advisers that have implicit as well as explicit voting authority must comply with *Rule 206(4)-6*. The rule thus applies when the advisory contract is silent but the adviser's voting authority is implied by an overall delegation of discretionary authority. The rule *does not* apply, however, to advisers that provide clients with advice about voting proxies but do not have authority to vote the proxies.

The duty of care requires an adviser with voting authority to monitor corporate actions and vote client proxies. Therefore, the adviser should have procedures in place designed to ensure that it fulfills these duties. However, the SEC does not suggest that an adviser that fails to vote every proxy would necessarily violate its fiduciary obligations. For example, there may even be times when refraining from voting a proxy is in the client's best interest, such as when the adviser determines that the cost of voting the proxy exceeds the expected benefit to the client. However, an adviser may not ignore or be negligent in fulfilling its assumed obligations toward voting client proxies. ►►

#### Implementation Strategy

The Firm does not, nor does it allow its Affiliates to, vote proxies on behalf of clients. The client is informed that it is the client's responsibility to vote proxies. All proxies will be sent directly to the client's address of record as listed on the account.

If a client supervised/managed account is subject to the Employee Retirement Security Act of 1974 ("ERISA"), decisions on voting of proxies for the securities in the portfolio will be made by the trustee of the client's account or a named fiduciary of the client's account.

The Firm shall only furnish proxy voting advice where there is an existing business relationship and we shall not solicit proxies. When providing proxy voting advice to clients, we shall abide by the following conditions:

The Firm will disclose any significant relationship with the issuer, its affiliates, or a securityholder proponent of the matter on which proxy voting advice is given, as well as any material interest of our firm in the matter;

We shall receive no special commission or remuneration for furnishing the voting advice from any person other than the security holder recipient thereof; and

The voting advice will not be furnished on behalf of any person soliciting proxies, or on behalf of a participant in an election contest subject to SEC Rule 14a-11.

AIC shall not communicate with the press concerning a proxy.

Deviations from these policies may require the Firm to comply with SEC Proxy Registration Rules.

## 12.02 Potential Conflicts of Interest

An investment adviser may have a number of conflicts that can affect how it votes proxies. For example, an adviser may manage a pension plan, administer employee benefit plans, or provide brokerage, underwriting, insurance, or banking services to a company whose management is soliciting proxies. Failure to vote in favor of management may harm the adviser's relationship with the company. The adviser may also have business or personal relationships with participants in proxy contests, corporate directors or candidates for directorships.

Therefore, in order to prevent material conflicts of interest from affecting the manner in which investment advisers may vote clients' proxies, on September 20, 2002, the SEC proposed *Rule 206(4)-6 and amendments to Rule 204-2*. The SEC proposed to require advisers to adopt and implement policies and procedures for voting proxies in the best interest of clients, to describe the procedures to clients, and to tell clients how they may obtain information about how the adviser has actually voted their proxies.

Under *Rule 206(4)-6*, it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of *section 206(4) of the Act* for an investment adviser to exercise voting authority with respect to client securities unless (i) the adviser has adopted and implemented written policies and procedures that are reasonably designed to ensure that the adviser votes proxies in the best interest of its clients; (ii) the adviser describes its proxy voting procedures to its clients and provides copies on request; and (iii) the adviser discloses to clients how they may obtain information on how the adviser voted their proxies. ►►

### Implementation Strategy

Not applicable. The Firm does not, nor does it allow its Affiliates to, vote proxies on behalf of clients.

## 12.03 Resolving Conflicts of Interest

According to the SEC's position on resolving conflicts of interest, an adviser's policy of disclosing the conflict to clients and obtaining their consents before voting would satisfy the requirements of the rule and, when implemented, would fulfill the adviser's fiduciary obligations under the Advisers Act. However, in the absence of client disclosure and consent, an adviser that has a material conflict of interest with its clients must take other steps designed to ensure, and must be able to demonstrate

that those steps resulted in, a decision to vote the proxies that was based on the clients' best interest and was not the product of the conflict.

Investment advisers may use various means of ensuring that proxy votes are voted in their clients' best interest and not affected by the advisers' conflicts of interest. Therefore, the following procedures detail how the Adviser may insulate its decision on how to vote client proxies from any perceived conflict. ►►

#### Implementation Strategy

Not applicable. The Firm does not, nor does it allow its Affiliates to, vote proxies on behalf of clients.

### 12.04 Description and Issuance of Proxy Voting Policy

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In accordance with *Rule 206(4)-6*, advisers are required to disclose how clients can obtain information from the adviser on how their securities were voted. The Rule also requires advisers to describe their proxy voting policies and procedures to clients, and upon request, to provide clients with a copy of those policies and procedures. The description should be a concise summary of the adviser's proxy voting process rather than a reiteration of the adviser's policies and procedures, and should indicate that a copy of the policies and procedures is available upon request. If a client requests a copy of the policies and procedures, the adviser must supply it.

*Note: Although the SEC requires public disclosure as a means of informing fund shareholders how the fund (or its adviser) voted proxies of the shareholders' fund, public disclosure is unnecessary for advisers to communicate to each client how the adviser has voted that client's proxies. Because public disclosure of proxy votes by some advisers would potentially reveal client holdings and thus client confidence, the SEC has determined that advisers are not required to disclose their votes publicly.*

Advisers may choose any means to make this disclosure, provided that it is clear, not "buried" in a longer document, and received by clients within 180 days after publication. For example, an adviser could send clients the disclosure together with a periodic account statement, deliver it in a separate mailing, or include it in its brochure (or Part 2A of Form ADV). Advisers that use their brochure or Part 2A to make the disclosure must deliver (not merely offer) the revised brochure to existing clients within 180 days after publication, and should accompany the delivery with a letter identifying the new disclosure. ►►

#### Implementation Strategy

Not applicable. The Firm does not, nor does it allow its Affiliates to, vote proxies on behalf of clients.

### 12.05 Record Keeping Requirements

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Under *Rule 204-2*, as amended, advisers must retain (i) their proxy voting policies and procedures; (ii) proxy statements received regarding client securities; (iii) records of votes they cast on behalf of clients; (iv) records of client requests for proxy voting information, and (v) any documents prepared by the adviser that were material to making a decision how to vote, or that memorialized the basis for the decision. The amendments permit an adviser to rely on proxy statements filed on EDGAR instead of keeping its own copies, and to rely on proxy statements and records of proxy votes cast by the adviser that are maintained with a third party such as a proxy voting service, provided that the adviser has obtained an undertaking from the third party to provide a copy of the documents promptly upon request. ►►

**Implementation Strategy**

The Firm does not vote proxies and, therefore, does not maintain proxy voting records.