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Tip for Updating Your Compliance Program: Enhanced Proxy Voting Requirements

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Compliance officers face the thankless task each year of reviewing their policies and procedures to determine their adequacy and effectiveness, as required by [Advisers Act Rule 206\(4\)-7](#). This review entails updating the firm's compliance program to reflect changes to relevant regulations and new regulatory guidance, and confirming the program is appropriately followed by the firm.

We've compiled a series of tips to help you focus on the U.S. Securities and Exchange Commission (SEC) focus areas for 2023. You can read our previous tips here:

- Tip 1: Get ready for SEC focus on hedge clauses in advisory agreements
- Tip 2: Keep tabs on Continuing Education requirements
- Tip 3: Update your compliance program to address the SEC Risk Alert about MNPI compliance issues
- Tip 4: Prepare for an SEC examination focused on Marketing Rule compliance
- Tip 5: Update Your Compliance Program to Prevent Identity Theft Under Regulation S-ID
- Tip 6: Environmental, Social, and Governance (ESG)
- Tip 7: Electronic Communications
- Tip 8: Prohibited Transaction Exemption
- Tip 9: Conflicts of Interest
- Tip 10: Fiduciary Standard
- Tip 11: Form CRS
- Tip 12: SEC Exam Observations Risk Alert

Tip #13 - Enhanced Proxy Voting Requirements

Privacy - Terms

The SEC adopted [rule and form amendments to Form N-PX](#) to standardize mutual fund proxy voting disclosures. The changes to Form N-PX mandate that mutual funds categorize and disclose their votes in a structured and uniform format, making them easier to read. Mutual fund managers will also have to file the form in a machine-readable format. Finally, funds need to disclose the number of shares voted, how they were voted, and the number of shares out on loan and not recalled for the vote.

The Commission also adopted new [Rule 14Ad-1](#) under the Securities Exchange Act of 1934, requiring managers that exercise investment discretion over securities with an aggregate value of at least \$100 million to report their say-on-pay votes annually. These managers are those that currently have to make filings on Form 13F. In addition, new Rule 14Ad-1 requires these institutional investment managers to report annually on Form N-PX “votes on the approval of executive compensation and on the frequency of such executive compensation approval votes, as well as votes to approve “golden parachute” compensation in connection with a merger or acquisition,” known as “say-on-pay.” Reporting is only required for institutional managers that exercise voting power over say-on-pay votes. An “institutional investment manager” is defined as an entity that either invests in or buys and sells securities for its own account. As discussed in an [FAQ](#) from the SEC, banks, including their trust departments, insurance companies, broker-dealers, trustees, and investment advisers that manage private accounts, mutual fund assets, or pension plan assets are institutional investment managers.

Our guidance

These rules have a long runway. The first Form N-PX filings under this new rule will be made after July 1, 2024, covering the period from July 1, 2023, to June 30, 2024. In the meantime, here are our recommendations:

For firms managing registered investment companies:

- Consult with the internal team or third-party service provider that helps the firm file its Form N-PX. Firms will need to adapt their current proxy voting data to comply with the new requirements, including:
 - Determine how to categorize the votes into the 14 broad categories included in the rule.
 - Develop a way to capture proxy votes where a proxy card (or proxy) is filed with the SEC. The new Form N-PX will require firms to use the same language as the issuer's proxy card to identify the matters being decided. The votes must also follow the same order as the proxy card.

- Discuss who will convert Form N-PX data into Extensive Mark-up Language (XML).
- For firms with multi-series trusts, develop a process for presenting proxy voting results separately for each series.
- For firms that participate in securities lending arrangements, review the process and consider the effect on proxy voting. The new rule requires firms to disclose the number of proxies that were not voted because they were out on loan. Firms may consider providing additional disclosure to investors on their securities lending practices.

For institutional investment advisers with the discretion to vote proxies, consider the following steps:

- Prepare for this new filing obligation by identifying an internal resource or engaging a third-party service provider to assist with these filings.
- Consider reviewing the firm's "say-on-pay" proxy voting policy to ensure it aligns with its disclosures and marketing materials.
- Consider whether to request confidential treatment for "say-on-pay votes." The SEC has indicated that confidential treatment would only be granted in narrowly tailored circumstances, similar to the standard for Form 13F.

How we help

We can help you to navigate the evolving regulatory landscape while considering the complexity of your firm's unique compliance requirements. Introducing [ACA Signature](#), a scalable solution curated to suit your firm's unique compliance needs. ACA Signature provides financial firms with scalable consulting solutions that can be paired with [innovative technology](#) and [managed services](#) for staying on top of regulatory and daily obligations. Our team of regulatory experts can build, enhance, or manage your compliance program, helping to mitigate risks and increase operational efficiency.

Designed by former regulators and compliance experts, ACA Signature provides services and solutions tailored to fulfill your firm's ongoing compliance obligations. Our team includes former SEC, FINRA, FCA, NFA, CFTC, and state regulators along with former Chief Compliance Officers and senior compliance managers from prominent financial institutions in the industry. With over 20 years' experience in the compliance industry, ACA is synonymous with quality compliance support.

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