

MERK INVESTMENTS LLC

555 Bryant St #455 • Palo Alto, CA 94301

December 16, 2024

Secretary of the Commission
Division of Investment Management
U.S. Securities and Exchange Commission
Via email to Secretarys-Office@SEC.GOV

Re: Proxy voting rulemaking

To whom it may concern,

In July, I submitted a complaint regarding how Saba Capital Management, L.P.'s practices harm investors. I am following up with an observation on an industry practice that undermines investor interests and a suggestion for how the SEC could help via rulemaking.

When an investor has a discretionary account with a registered investment adviser, the adviser is usually better informed about the securities and voting issues than the client. While the SEC allows advisers to abstain from voting client securities, this may not align with clients' best interests in contested proxies.

To address this, I recommend that the SEC issue guidance to reduce advisers' perceived liability for voting client proxies. This could encourage advisers to engage in proxy voting and better protect investors.

Context:

- **Small Advisers:** Many small advisers avoid voting client proxies due to the additional work and fear of SEC scrutiny if they miss a vote. A note clarifying that voting contested proxies aligns with fiduciary duties, and that advisers may adopt focused voting policies, could address this.
- **Larger Advisers:** Many larger firms either outsource voting - an area where deficiencies were highlighted in my July 2024 complaint - or restrict their representatives' involvement due to liability concerns. Restrictions range from allowing representatives to advise clients, to only responding to inbound queries, to prohibiting any proxy discussions. For example, this is taken from an adviser's Form ADV Part 2 brochure:

"Neither [firm name] nor its IARs will take any action or provide advice regarding the voting of proxies solicited by issuers of securities in which your assets are invested."

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Implications and Recommendations:

Current practices suppress the voices of the silent majority, leaving contested proxies dominated by activist investors. To better protect investors, the SEC should remind advisers that it is consistent with applicable standards that:

- Voting or advising on contested proxies, based on informed assessments, aligns with the client's interest.
- Representatives within the same firm recommending different voting actions reflects their individual assessments and is perfectly acceptable, provided they follow the firm's proxy voting policy. It is neither expected nor required that the firm, as a whole, adopts a unified stance on any particular proxy.

This guidance would encourage more advisers to engage in proxy voting, ensuring that more investors are represented. Increasing participation in voting would benefit everyone and ensure a more balanced representation of investor interests.

Feel free to follow up with me at (650)323 4341 ext. 101 or via email at agm@merkinvestments.com regarding any questions you may have regarding this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Axel Merk', with a stylized flourish at the end.

Axel

Axel Merk
Merk Investments LLC