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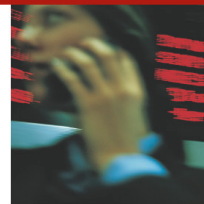
May 2009

**INVESTMENT MANAGEMENT
UPDATE****SEC Enters Order Against Adviser Related to Proxy Voting**

On May 7, 2009, the Securities and Exchange Commission (SEC) entered a Cease and Desist Order (“Order”) against an investment adviser and its chief operating officer and vice president for violations of Rule 206(4)-6 under the Investment Advisers Act of 1940 relating to proxy voting procedures.¹ The adviser, INTECH Investment Management LLC (“INTECH”) and its officer, David E. Hurley, submitted Offers of Settlement to the SEC and consented to the issuance of the Order.

The Order noted that INTECH had violated Rule 206(4)-6 from at least 2003 through 2006. Rule 206(4)-6 requires that advisers adopt and implement written policies and procedures designed to ensure that the adviser votes proxies in the best interests of its clients and the policies must include information regarding how the adviser addresses material conflicts that may arise between the adviser’s interests and those of its clients. Rule 206(4)-6 further requires that advisers disclose to clients how they may obtain the adviser’s proxy voting record and a copy of the adviser’s proxy voting policies and procedures.

Since 2002, INTECH exercised proxy voting authority on behalf of those clients who had delegated such authority to INTECH. INTECH utilized a third-party proxy voting platform provided by ISS, known as the ISS General Guidelines. The Order notes that the ISS General Guidelines typically recommend voting in accordance with management’s recommendations. As a result of its use of the ISS General Guidelines, INTECH received numerous inquiries and complaints regarding its proxy voting from certain of its clients, many of which were union-affiliated accounts, such as pension funds, foundations, public funds and corporations. At about the same time the complaints regarding INTECH’s proxy voting were being received, INTECH participated in the AFL-CIO Key Votes Survey (“AFL-CIO Survey”) sponsored by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). The AFL-CIO Survey assessed proxy votes made by investment advisers and ranked advisers based on the consistency of their voting results with AFL-CIO proxy voting recommendations. The results of the survey placed INTECH low on the scale of advisers who vote proxies in a manner favorable to the AFL-CIO. INTECH recognized that receiving a higher ranking in the AFL-CIO Survey could result in more advisory business from labor organizations and other entities that referenced the results of the AFL-CIO Survey when making decisions regarding the hiring of investment advisory firms. As a result, on January 1, 2003, INTECH switched from the ISS General Guidelines to the ISS-PVS Guidelines for all of its clients. The ISS-PVS Guidelines were based on the AFL-CIO proxy voting recommendations, a fact that was not communicated to INTECH’s clients either in its proxy voting guidelines or in other client communications. Later in 2003, INTECH increased significantly its standing in the AFL-CIO Survey, primarily as a result of its change to the ISS-PVS Guidelines.



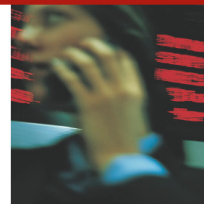
Pursuant to INTECH's proxy voting policy, Hurley, as the firm's chief operating officer, was responsible for evaluating whether certain proxy votes created conflicts between INTECH and the best interests of its clients. Hurley, who participated in the drafting of INTECH's proxy voting policy, admitted knowing that the decision to use the ISS-PVS Guidelines for all firm clients created a potential conflict of interest because not all clients would agree with votes made pursuant to the ISS-PVS Guidelines and that voting proxies pursuant to the ISS-PVS Guidelines would benefit INTECH in obtaining and retaining union-affiliated clients. Nevertheless, the potential conflict of interest was not discussed with INTECH's counsel and was not detailed in the firm's policies and procedures as required by Rule 206(4)-6. Furthermore, in a letter to clients, Hurley stated that because INTECH was relying on a third-party proxy voting service, it did not anticipate that any conflicts of interest would arise.

In response to client and SEC inquiries regarding the firm's proxy voting policy, in 2006 INTECH started offering its clients a choice between the ISS General Guidelines and the ISS-PVS Guidelines. In a communication to clients describing the choices, INTECH advised clients that the ISS-PVS Guidelines were based on AFL-CIO proxy voting recommendations. INTECH thereafter revised its Form ADV to disclose that clients had a choice between the two ISS proxy voting guidelines and that if no choice were made, INTECH would vote proxies in accordance with the ISS-PVS Guidelines. INTECH further disclosed in its Form ADV that as a result of voting proxies in accordance with the ISS-PVS Guidelines, INTECH was voting consistent with AFL-CIO voting recommendations and such action may benefit INTECH by obtaining additional union-affiliated clients. Later in 2006, INTECH's proxy policies were again changed to offer clients more proxy voting options and to set the default to a set of guidelines that best represented the client type.

In the release adopting Rule 206(4)-6, the SEC noted that advisers are fiduciaries and as such, owe to each client a duty of care and loyalty regarding proxy voting.² The SEC further commented that to satisfy its duty of loyalty, an adviser must cast proxy votes in a manner consistent with the clients' best interests. The SEC noted that the use of predetermined voting policies prepared by third parties such as ISS were permissible, provided that the policies are designed to further the best interests of the adviser's clients and not those of the adviser.

The SEC stated that as a result of the conduct alleged in the Order, INTECH had willfully violated Section 206(4) of the Investment Advisers Act of 1940 and Rules 206(4)-6(a) and 206(4)-6(c) thereunder. Furthermore, the SEC determined that Hurley willfully aided and abetted and caused INTECH's violations of the Investment Advisers Act and the associated rules. INTECH was censured and ordered to pay a fine of \$300,000. Hurley was censured and ordered to pay a fine of \$50,000.

This case highlights the importance of monitoring proxy voting guidelines on an ongoing basis. While third-party proxy voting services are beneficial, advisers must assess their clients' interests and determine that the votes made by the third-party service do not place the interest of the adviser above those of its clients. Additionally, advisers should periodically review disclosures related to their proxy voting guidelines on Form ADV, in communications to clients, and for advisers to investment companies, in the fund's prospectus or statement of additional information.



FOR MORE INFORMATION

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¹ See *In the Matter of INTECH Investment Management LLC and David E. Hurley*, IA Release No. 2872 (May 7, 2009).

² Investment Advisers Act Rel. No. 2106 (January 31, 2003).