



Securities Law ADVISORY ■

NOVEMBER 13, 2019

SEC Proposes Rule Amendments to Modernize Shareholder Proposals and Improve Accuracy and Transparency of Proxy Voting Advice

On November 5, 2019, the Securities and Exchange Commission (SEC) voted to propose two sets of amendments that would (1) modernize the thresholds and process by which shareholder proposals are included in a registrant's proxy statements; and (2) increase the accuracy and transparency of information investors receive from proxy advisory firms.

Modernization of Shareholder Proposals

The [first proposal](#) would amend Rule 14a-8 of the Securities Exchange Act of 1934, as amended, which regulates the inclusion of shareholder proposals in registrants' proxy statements. Specifically, the proposed amendments would:

- Expand the eligibility requirements a shareholder must satisfy to have a proposal included in a registrant's proxy statement.
- Change the one proposal rule from "each shareholder" to "each person" who submits a proposal.
- Increase the threshold of support a shareholder proposal must receive to be eligible for resubmission at the registrant's future shareholder meetings.

Background

In 2018, the SEC received and reviewed nearly 5,700 proxy materials and 250 no-action requests regarding shareholder proposals. SEC rules on proxy procedural and substantive requirements have not been updated in over 20 years. After a 2018 roundtable discussion and public feedback, the SEC agreed to review and modernize the shareholder-proposal process.

Eligibility requirements

The proposed amendments would amend Rule 14a-8(b) of the Exchange Act to heighten the ownership threshold required for a shareholder to submit a proposal for inclusion in the registrant's proxy materials.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

Currently, any shareholder that holds at least \$2,000 worth of shares or 1% of the registrant's outstanding equity for at least one year can submit a proposal. Under the proposed amendments, the SEC is proposing a tiered ownership structure. Under the proposed rules, shareholders would need to continuously own:

- At least \$2,000 of the registrant's shares for at least three years;
- At least \$15,000 of the registrant's shares for at least two years; or
- At least \$25,000 of the registrant's shares for at least one year.

Additionally, the proposed amendments would require a shareholder that utilizes a representative to submit a proposal to provide documentation authorizing the representative to act on its behalf and provide assurances of the shareholder's identity and interest in submitting the proposal.

Shareholders that submit a proposal would also be required under the proposed rules to meet with the registrant, in person or via teleconference, to discuss the proposal within no less than 10 calendar days and no more than 30 calendar days after the proposal is submitted.

One proposal per person rule

The proposed amendments would also amend Rule 14a-8(c) so that the one-proposal rule would apply to "each person" instead of the current "each shareholder" standard. The SEC believes this change will prevent shareholders from submitting one proposal under their name and submitting another proposal as a representative of another shareholder at the same meeting. It would also prevent one person from acting as the representative of two or more shareholders of record to submit multiple proposals at the same meeting.

Resubmission thresholds

The proposed amendments would also amend the requirements for resubmitting a proposal under Rule 14a-8(i)(12). If a shareholder proposal does not reach a certain percentage of votes, a registrant can exclude the proposal the following year. Below is a chart that outlines the current and proposed thresholds a shareholder proposal would need to meet in order to be resubmitted.

Number of Times on Ballot	Current Threshold	Proposed Threshold
First Vote	3%	5%
Second Vote	6%	15%
Three or More Votes	10%	25%

Finally, the proposed amendments would allow registrants to exclude proposals that have been voted on three or more times in the previous five years if the proposal received more than 25% but less than 50% of the vote and voter support declined by more than 10% since the previous vote.

Proxy Voting Advice Amendments

The [second proposal](#) would amend Rule 14a of the Exchange Act, which currently exempts proxy advisory firms from certain filing and information requirements. The proposed amendments would:

- Increase material conflicts of interest disclosure requirements for proxy advisory firms.
- Standardize the opportunities investors and other soliciting persons have to review recommendations from proxy advisory firms.
- Codify the definition of “solicitation” under Exchange Act Rule 14a-1(l) to include proxy advisory firms.
- Include a nonexhaustive list of examples of when the failure to disclose certain information by proxy advisory firms may be considered misleading.

Background

In September 2019, the SEC released [guidance](#) clarifying the applicability of the federal proxy rules on proxy advisory firms such as ISS and Glass Lewis. In particular, this guidance concluded that advice provided by proxy advisory firms generally constitutes a “solicitation” under Section 14(a) of the Exchange Act. As a part of this review, the staff of the Divisions of Investment Management and Corporation Finance recommended that the SEC propose rule amendments on proxy voting advice.

Definitional changes

Under the proposed amendments, Rule 14a-1(l) would be amended to include specific instances of when providing proxy voting advice would be considered a “solicitation” under the statutory definition of “solicitation.” The proposal also includes an exception when voting advice provided in response to an unprompted request would not constitute a solicitation.

Information and filing requirements

Previously, proxy advisory firms were exempt from certain information and filing requirements. The proposal would amend Rule 14a-2(b) to require disclosure of material conflicts of interest in their proxy voting advice.

Additionally, the proposed rules would require additional procedural requirements, including the opportunity for review and feedback.

Under the proposed rules, registrants and other parties that solicit advice from firms must be given an opportunity to review and provide feedback on proxy advisory reports before they are issued. However, the review and feedback period would only be available to companies that file definitive proxy materials 25 days or more before the relevant shareholder meeting:

- The length of time the party has to review will depend on the time between the date of filing the proxy statement and the date of the shareholder meeting.
- Proxy advisory firms would be permitted to use confidentiality agreements while parties are conducting the review and feedback period.

Additionally, if requested, proxy advisory firms must include hyperlinks or similar media that allow investors to review written statements by the registrant about its opinion on the proxy voting advice.

Finally, under these proposed amendments, Rule 14a-9, the proxy rules general anti-fraud rule that prohibits proxy solicitations from including misleading or false information, would be amended to include specific examples of violations related to proxy advisory firms. For instance, failure to disclose the methodology used to furnish proxy voting advice would be deemed misleading under the proposal.

Going Forward

Each proposal will be subject to a 60-day public comment period. To submit comments, use the SEC's Internet submission form or send an email to rule-comments@sec.gov.

You can subscribe to future *Securities* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you would like more information, please feel free to contact one of the attorneys in our [Securities Group](#).

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2019

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
LONDON: 5th Floor, Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
SILICON VALLEY: 950 Page Mill Road ■ Palo Alto, California, USA, 94304 ■ 650-838-2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333