



Securities Law ADVISORY ■

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SEC Proposes Amendments to Rules Governing Proxy Voting Advice

On November 17, 2021, the Securities and Exchange Commission (SEC) voted to propose amendments relating to proxy voting advice. The proposed amendments would remove two rules applicable to proxy voting advice businesses adopted by the SEC in 2020 that relate to (1) conditions for proxy advisory firms to utilize exemptions from the information and filing requirements of the proxy rules; and (2) additional guidance for the antifraud provisions applicable to proxy advice.

Previous Rule Amendments for Proxy Voting Advice

In July 2020, the SEC adopted final rules [establishing new requirements for proxy advisory firms](#). Specifically, the SEC added two conditions in Rule 14a-2(b) of the Exchange Act, to exemptions from the proxy rules' information and filing requirements that proxy advisors often rely on. The SEC also amended Rule 14a-9 of the Exchange Act, which prohibits false or misleading statements by adding Note (e), setting forth examples of material misstatements or omissions related to proxy voting advice. Following their adoption, investors and others expressed concerns that these 2020 rules negatively impacted proxy advisory firms' ability to timely deliver independent proxy voting advice to their clients.

Proposal One – Amendments to Filing and Information Requirements

The SEC proposed to amend Rule 14a-2(b)(9), which currently exempts proxy advisory firms from certain filing and information requirements. In July 2020, the SEC adopted final rules that required the disclosure of material conflicts of interest in proxy advisory firms' proxy voting advice and that the proxy voting advice about a registrant must be made available to the registrant before or at the same time that the proxy voting advice is distributed to the business's clients. The rules are not effective until December 1, 2021, and there is pending litigation related to investors' and others' concerns that these 2020 rules would impose increased compliance costs on proxy advisory firms and impair the independence of their proxy voting advice.

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The proposed amendment would rescind two conditions on the availability of exceptions from the proxy rules' information and filing requirements, which would require that:

1. Proxy advisory firms make their advice available to registrants that are the subject of their advice at or before the time the advice is made available to their clients.
2. Clients of proxy voting advice businesses are provided with a means of becoming aware of any written responses by registrants to proxy voting advice.

Proposal Two – Amendments to the General Antifraud Rule

The second proposal would amend Rule 14a-9, the proxy rules' general antifraud rule that prohibits proxy solicitations from including misleading or false statements. The current rule includes specific examples of material misstatements or omissions related to proxy voting advice. Following the adoption of the specific examples in 2020, investors and others expressed concerns that Note (e) may increase proxy advisory firms' litigation risk and result in impaired independence and quality of their proxy voting advice.

The proposed amendment would address these concerns by removing Note (e), which provides that failure to disclose material information about proxy voting advice, such as the proxy voting advice business's methodology, sources of information, or conflicts of interest, could be misleading.

Going Forward

The proposed amendments will be subject to a 30-day comment period. To submit comments, use the SEC's internet submission form or send an e-mail to rule-comments@sec.gov.

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