

# Proxy Voting Advice



The Securities and Exchange Commission (SEC) will consider proposing amendments to the current proxy rules governing proxy voting advice to enhance proxy advisory firms' ability to deliver independent proxy voting advice to their clients in a timely manner.

The proposed amendments would address investor concerns about the current rules by removing certain conditions from the proxy rule exemptions for proxy voting advice and clarifying the scope of proxy advisory firms' liability for their advice.

## Background

Proxy advisory firms, or "proxy voting advice businesses," help shareholders exercise their right to vote on matters at issue in the public companies they own by providing advice according to predetermined policies and facilitating the vote execution process. Investors rely on proxy advisory firms to stay informed about company and shareholder proposals.

In July 2020, the Commission adopted final rules establishing new requirements for proxy advisory firms. Since their adoption, investors and others have continued to express strong concerns about the 2020 rules' impact on proxy advisory firms' ability to deliver independent proxy voting advice to their clients in a timely manner. The proposed amendments would address those concerns by rescinding two portions of the 2020 rules.

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## Proxy Rule Exemptions for Proxy Voting Advice

The 2020 rules added conditions in Rule 14a-2(b)(9)(ii) to exemptions from the proxy rules' information and filing requirements that proxy advisory firms often rely on. First, those conditions require proxy advisory firms to make their advice available to the companies that are the subject of their advice at or before the time that they make the advice available to their clients. Second, the conditions require proxy advisory firms to provide their clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding the proxy advisory firms' proxy voting advice by registrants who are the subject of the advice.

Investors and others have expressed concerns that those conditions will impose increased compliance costs on proxy advisory firms and impair the independence of their proxy voting advice. The proposed amendments would address those concerns by rescinding Rule 14a-2(b)(9)(ii) as well as the related safe harbors and exclusions from those conditions.

## Liability Rule for Proxy Voting Advice

The 2020 rules also amended Rule 14a-9, which prohibits false or misleading statements, to add Note (e), which sets forth examples of material misstatements or omissions related to proxy voting advice. Specifically, Note (e) provides that the failure to disclose material information regarding proxy voting advice could be misleading.

Investors and others have expressed concerns that Note (e) may increase proxy advisory firms' litigation risks, which could impair the independence and quality of their proxy voting advice. The proposed amendments would rescind Note (e) to Rule 14a-9 while affirming that the rule applies to material misstatements of facts contained in proxy voting advice. The proposing release also presents Commission guidance regarding the application of Rule 14a-9 to statements of opinion contained in proxy voting advice.

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### ***Additional Information:***

If the amendments are proposed, comments may be submitted on the proposed amendments, until 30 days after the date the proposing release is published in the Federal Register. The Commission and its staff will review those comments and meet with commenters as necessary to determine what action to take with respect to the proposed rules.