

Press Release

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

FOR IMMEDIATE RELEASE

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Washington D.C., Nov. 5, 2019 — The Securities and Exchange Commission today voted to propose amendments to its rules governing proxy solicitations to enhance the quality of the disclosure about material conflicts of interest that proxy voting advice businesses provide their clients. The proposal would also provide an opportunity for a period of review and feedback through which companies and other soliciting parties would be able to identify errors in the proxy voting advice. The review and feedback period would only be available to companies that file definitive proxy materials 25 days or more in advance of the relevant meeting. The Commission's proposal aims to enhance the accuracy and transparency of the information that proxy voting advice businesses provide to investors and others who vote on investors' behalf, and thereby facilitate their ability to make informed voting decisions.

"I would like to thank Commissioner Roisman for his leadership as we consider these improvements to the proxy voting system," said Chairman Jay Clayton. "Today's proposals are rooted in key principles of our federal securities laws – disclosure of material conflicts of interest and constructive shareholder-issuer engagement – and benefit from the considerable experience of the staff and the feedback the Commission has received for more than a decade. These proposals recognize the important role proxy voting advice businesses play in our markets and would benefit our Main Street investors – who, more and more, invest through funds where the asset managers rely on the advice, services and reports of proxy voting advice businesses."

"I commend the staff for crafting a thorough policy proposal, tailored to address the concerns many have persistently raised about proxy voting advice businesses, while minimizing changes to the highly choreographed proxy voting season," said Commissioner Elad Roisman.

The proposal will have a 60-day public comment period following its publication in the Federal Register.

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FACT SHEET

Proposed Rule Amendments for Proxy Voting Advice

SEC Open Meeting

Nov. 5, 2019

The Securities and Exchange Commission today proposed amendments to its rules that exempt businesses furnishing proxy voting advice from the filing and information requirements of the federal proxy rules. The Commission's proposal is intended to help ensure that proxy voting advice used by investors and others who vote on investors' behalf is accurate, transparent, and materially complete. If adopted, the proposal would amend Exchange Act Rule 14a-2(b), which provides exemptions from the proxy rules' filing and information requirements for certain kinds of solicitations, call for enhanced disclosure of material conflicts of interest, a standardized opportunity for registrants and other soliciting persons to review proxy voting advice, and an improved means for

investors to be informed about differing views on the advice. In addition, the proposed changes would codify recent Commission guidance by amending the definition of “solicitation” in Exchange Act Rule 14a-1(l) to include proxy voting advice, with certain exceptions, and provide additional illustrative examples to Exchange Act Rule 14a-9, the proxy rules’ antifraud provision.

Background

The Commission’s proposal is part of its ongoing focus on improving the proxy process and the ability of shareholders to exercise their voting rights. It follows the Commission’s recent guidance clarifying [the applicability of the federal proxy rules to proxy voting advice](#) and [the proxy voting responsibilities of investment advisers](#), roundtables on the [proxy process](#) in 2018 and [proxy advisory services](#) in 2013, and the publication of its [Concept Release](#) on the U.S. proxy system in 2010.

Highlights

Rule 14a-1(l). The proposed amendments would amend Exchange Act Rule 14a-1(l), which defines the terms “solicit” and “solicitation,” to specify the circumstances when a person who furnishes proxy voting advice will be deemed to be engaged in a solicitation subject to the proxy rules. The proposed amendment would also codify the Commission’s view that voting advice provided in response to an unprompted request would not constitute a solicitation.

Rules 14a-2(b)(1) and 14a-2(b)(3). The proposed amendments would revise Rule 14a-2(b), which provides exemptions from the information and filing requirements of the proxy rules. Under the proposed amendments, proxy voting advice businesses relying on these exemptions would be subject to the following conditions:

- They must include disclosure of material conflicts of interest in their proxy voting advice;
- Registrants and certain other soliciting persons must be given an opportunity to review and provide feedback on proxy voting advice before it is issued (with the length of the review period dependent on the number of days between the filing of the definitive proxy statement and the date of the shareholder meeting); and
- Registrants and certain other soliciting persons may request that proxy voting advice businesses include in their voting advice a hyperlink or analogous electronic medium directing the recipient of the advice to a written statement that sets forth the registrant’s or soliciting person’s views on the proxy voting advice.

The proposed amendments would permit proxy voting advice businesses to require registrants and other soliciting persons to enter into confidentiality agreements for materials exchanged during the review and feedback period and would allow proxy voting advice businesses to rely on the exemptions where failure to comply with the new conditions was immaterial or unintentional.

Rule 14a-9. The proposed amendments would modify Rule 14a-9 to include examples of when the failure to disclose certain information in the proxy voting advice could, depending upon the particular facts and circumstances, be considered misleading within the meaning of the rule.

What’s Next?

The 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.

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Related Materials

- Proposed Rule

