

Statement on Compliance with the Commission's 2019 Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice and Amended Rules 14a-1(l), 14a-2(b), 14a-9

SEC Division of Corporation Finance

June 1, 2021

In September 2019, the Commission issued an interpretation and guidance addressing the application of the proxy rules to proxy voting advice businesses. *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice*, 84 Fed. Reg. 47,416 (Sept. 10, 2019) ("2019 Interpretation and Guidance"). On July 22, 2020, the Commission adopted amendments to Rules 14a-1(l), 14a-2(b), and 14a-9. See *Exemptions from the Proxy Rules for Proxy Voting Advice*, 85 Fed. Reg. 55,082 (Sept. 3, 2020) ("2020 Rule Amendments"). Those amendments codified the Commission's view that proxy voting advice generally constitutes a "solicitation" as defined in Rule 14a-1(l), adopted Rule 14a-2(b)(9) to add new conditions to two exemptions from the proxy rules' information and filing requirements that proxy voting advice businesses often use, and amended the Note to Rule 14a-9 to include specific examples of material misstatements or omissions related to proxy voting advice. The rule amendments became effective on November 2, 2020. The Commission stated that proxy voting advice businesses subject to the final rules would not be required to comply with the new conditions in amended Rule 14a-2(b)(9) until December 1, 2021.

At the direction of the Chair, we are now considering whether to recommend that the Commission revisit the 2019 Interpretation and Guidance and the 2020 Rule Amendments. In light of this direction, the Division of Corporation Finance has determined that it will not recommend enforcement action to the Commission based on the 2019 Interpretation and Guidance or the 2020 Rule Amendments during the period in which the Commission is considering further regulatory action in this area. In addition, in the event that new regulatory action leaves the 2020 exemption conditions in place with the current December 1, 2021 compliance date, the staff will not recommend any enforcement action based on those conditions for a reasonable period of time after any resumption by Institutional Shareholder Services Inc. of its litigation challenging the 2020 amendments and the 2019 Interpretation and Guidance. (*ISS v. SEC*, 1:19-cv-3275 (D.D.C.)).

This statement is subject to any further action that may be taken by the Commission, expresses the Division's position on enforcement action only, and does not express any legal conclusion.

Questions about this statement should be directed to the Division of Corporation Finance at (202) 551-3100.