

# Proxy Voting Advice



The Securities and Exchange Commission adopted amendments to the proxy rules governing proxy voting advice as proposed in 2021. The rules enhance proxy advisory firms' ability to deliver independent proxy voting advice to their clients in a timely manner.

The final amendments rescind certain conditions from the proxy rule exemptions for proxy voting advice and related guidance to investment advisers. They also remove a note that provided examples of situations in which the failure to disclose certain information in proxy voting advice may be considered misleading within the meaning of the proxy rules' prohibition on material misstatements or omissions.

## Background

Proxy advisory firms, or "proxy voting advice businesses" (PVABs), 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, institutional investors and other PVAB clients have continued to express strong concerns about the 2020 rules' impact on their ability to receive independent proxy voting advice in a timely manner. In November 2021, the Commission proposed amendments that would rescind two portions of the 2020 rules. Under the proposed amendments, proxy voting advice generally would remain a "solicitation" subject to the proxy rules, and proxy advisory firms generally would still be subject to the conflicts of interest disclosure requirements adopted in 2020.

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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 upon which proxy advisory firms often rely. First, those conditions required 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 required proxy advisory firms to provide their clients with a mechanism by which they could reasonably be expected to become aware of any written statements by registrants who are the subject of the advice regarding the proxy advisory firms' proxy voting advice.

Upon further analysis in light of continued concerns expressed by investors and others, the Commission concluded that the potential informational benefits to investors of these conditions do not sufficiently justify the risks they pose to the cost, timeliness, and independence of proxy voting advice. The Commission is rescinding Rule 14a-2(b)(9)(ii) and the related safe harbors and exclusions from those conditions.

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## **2020 Supplemental Proxy Voting Guidance**

In connection with the 2020 rules, the Commission issued supplemental guidance to investment advisers about their proxy voting obligations. The supplemental guidance was prompted, in part, by the Commission's adoption of the conditions set forth in Rule 14a-2(b)(9)(ii). The adopting release rescinds the supplemental guidance, noting consideration of comment letters on the November 2021 proposing release and existing obligations and considerations regarding proxy voting under the Investment Advisers Act of 1940.

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## **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 set forth examples of material misstatements or omissions related to proxy voting advice. Specifically, Note (e) provided that the failure to disclose material information regarding proxy voting advice could be misleading.

The final amendments delete Note (e) to Rule 14a-9, as the Commission concluded that Note (e) created a risk of confusion regarding the application of Rule 14a-9 to proxy voting advice. The adopting release also discusses the Commission's views regarding the application of Rule 14a-9 to proxy voting advice, in particular with respect to statements of opinion.

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

The final amendments and the rescission of the guidance will be effective 60 days after the date of publication of the adopting release in the Federal Register.