



SEC Adopts Rule Amendments Regarding Proxy Voting Advice

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The SEC has adopted rule [amendments to the proxy rules](#) related to proxy voting advice businesses, such as Glass Lewis and ISS, as part of its long term effort to evaluate and improve the proxy process.

The new rules, which fall under Rule 14a-2(b)(1) and (b)(3) under the Securities Exchange Act, were approved on July 22 after receiving and considering a substantial number of comments on the SEC's initial proposal issued in November 2019. [The final amendments](#) "codify the Commission's longstanding view that proxy voting advice generally constitutes a solicitation under the proxy rules, and make clear that the failure to disclose material information about proxy voting advice may constitute a potential violation of the antifraud provision of the proxy rules."

Under these amendments, proxy voting advice businesses may rely on exemptions from the information and filing requirements of the proxy rules on two conditions. First, the firm must disclose certain conflicts of interest. Second, the firm must adopt "publicly disclosed written policies and procedures" to ensure that their proxy voting advice is made available to the company and that the company's response is made available to the firm's clients.

The final amendments stop short of the review and feedback process the SEC initially proposed in November. There are two non-exclusive safe harbors available under the new amendments.

The amendments are part of a decade-long effort by the SEC to evaluate and improve the proxy process given the importance of proxy voting advice businesses, which are frequently relied upon by large institutional investors and investment advisers.

In addition, the amendment modifies Rule 14a-9 to include examples of

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circumstances where “failure to disclose certain material information in proxy voting advice could, depending upon the particular facts and circumstances, be considered misleading within the meaning of the rule.” The examples include “material information about the proxy voting advice business’s methodology, sources of information, or conflicts of interest.”

The SEC acknowledged commenters’ concerns about heightened litigation risk associated with these changes, but reiterated the applicability of Rule 14a-9 to “all solicitations, even those made in reliance on an exemption from the information and filing requirements of the federal proxy rules.” It therefore noted that “proxy voting advice businesses and other market participants” should have been on notice that the rule applies to proxy voting advice.

These amendments become effective 60 days after publication in the Federal Register, but affected proxy voting advice businesses subject to the final rules are not required to comply with the amendments to Rule 14a-2(b)(9) until December 1, 2021.

The SEC also [supplemented its prior guidance](#) to investment advisers regarding their proxy voting responsibilities in light of the amendments. This guidance relates to how investment advisers can fulfill their fiduciary duties to their clients when relying on proxy advice businesses, and provides specific guidance with respect to pre-populated forms and automated voting.