

SEC Changes the Proxy Voting Advice Rules (Again)

Last week, the SEC adopted rule amendments to the proxy voting advice rules - in a 3-2 vote - reversing course on most of the rule changes adopted a scant two years ago involving how proxy advisors operate. The SEC refers to proxy advisors as "proxy voting advice businesses" - or "PVABs" - but I'm sticking to "proxy advisors." Here's the [104-page adopting release](#).

The [SEC's press release](#) lays out all the changes nicely. The amendments do three things:

1. **Certain Conditions to Exemption for Proxy Advice Rescinded** - The rule changes rescind conditions to the availability of the exemptions from the proxy filing and disclosure requirements on which proxy advisors typically rely. The conditions adopted in 2020, and now rescinded, required that:
 - a. Companies that are the subject of proxy voting advice have such advice made available to them in a timely manner; and
 - b. Proxy advisor clients are provided with a means of becoming aware of any written responses by companies to proxy voting advice.

These deletions don't completely reverse the 2020 rule changes. Proxy advisors still have to satisfy the Rule 14a-2(b)(9) conflicts of interest disclosure requirement to be able to rely on the Rules 14a-2(b)(1) and (3) exemptions from the disclosure and filing requirements.

2. **Example of Misleading Information Rule 14a-9 Removed** - The rule changes also remove the 2020 changes made to Rule 14a-9, which prohibits false or misleading statements in solicitation materials. The 2020 amendments added as an example of what might be misleading within the meaning of the rule: "[f]ailure to disclose material information regarding proxy voting advice..., such as the proxy voting advice business's methodology, sources of information, or conflicts of interest."

Although the example added in 2020 was intended to clarify Rule 14a-9's application to proxy voting advice, the adopting release argues that it created confusion. The adopting release does, however, affirm that proxy voting advice remains subject to the anti-fraud requirements of Rule 14a-9.

3. **Investment Adviser Guidance on Automated Voting Rescinded** - The adopting release also rescinds guidance that the SEC issued to investment advisers when the 2020 amendments were adopted regarding their proxy voting obligations in connection with automated voting (sometimes called "robo-voting").

ISS previously filed suit against the SEC challenging the 2020 amendments. While these reversals seem to address some of the claims in those suits, ISS issued [this statement](#) about the lack of a complete reversal.

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