

## SEC Proposes Changes to its 2020 Proxy Advice Amendments (Registered Funds Regulatory Update)

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*(Article from Registered Funds Regulatory Update, January 2022)*

*For more information, please visit the [Registered Funds Resource Center](#).*

The SEC voted to propose amendments to its rules governing proxy voting advice provided by proxy advisory firms by a 3-2 vote. In July 2020, the SEC adopted amendments to the proxy voting rules that were designed to allow investors who utilize proxy advisory firms for proxy voting advice to receive more transparent, accurate and complete information on which to make their voting decisions, without imposing undue costs or delay (“2020 Amendments”). However, the 2020 Amendments were criticized in that they might impede or impair the timeliness and independence of proxy advisers and subject them to undue litigation risk and compliance costs. While keeping the bulk of the 2020 Amendments intact, the most notable proposed changes to the 2020 Amendments would rescind conditions to the availability of two exemptions frequently relied on by proxy advisers to avoid information and filing requirements. Those conditions require proxy advisers to adopt policies and procedures reasonably designed to ensure that they: (i) make their advice available to the public companies that are the subject of the advice at or before the time that they make the advice available to their clients (*e.g.*, funds and investment advisers); and (ii) provide their clients with a mechanism by which they can reasonably be expected to become aware of any written responses by public companies regarding their proxy advice in a timely manner before the relevant shareholder meeting. Certain related safe harbors and exclusions have also been proposed to be rescinded.

Additionally, the proposed amendments would amend Exchange Act Rule 14a-9, the general anti-fraud rule pertaining to proxy rules, which prohibits proxy solicitations from including false or misleading statements. Following the 2020 Amendments, the SEC claims that investors and others expressed concerns regarding an added note setting forth non-exclusive examples of potential false or misleading proxy advice. The proposed amendments would rescind the note in its entirety to seek to avoid exposing a proxy advisory firm to risks of litigation.

Finally, in connection with the proposed amendments, the SEC sought comment as to whether the Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers that was issued in conjunction with the 2020 Amendments should also be reconsidered.

The proposed amendments were subject to comment until December 27, 2021.

*Proxy Voting Advice*, SEC Release No. 34-93595 (Nov. 17, 2021), available at <https://www.sec.gov/rules/proposed/2021/34-93595.pdf>.

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