
SEC Backtracks on Significant Portions of its 2020 Proxy Voting Advice Rules

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On July 13, 2022, the Securities and Exchange Commission (the “SEC”) voted to [adopt amendments](#) (the “2022 Final Rule”) to its rules governing proxy voting advice. The final amendments rescind significant portions of the rules applicable to proxy voting advice businesses (“PVABs”) that the SEC had adopted in July 2020 (the “[2020 Rule](#)”). With the 2020 Rule, the SEC (1) codified its long standing position that proxy voting advice constitutes a solicitation within the meaning of Section 14(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), (2) adopted rules that conditioned the availability of two exemptions from the proxy rules’ information and filing requirements on which PVABs often rely, (3) added a note explaining when the failure to disclose proxy advice could be considered misleading under Rule 14a-9, and (4) provided supplemental guidance to investment advisers on how to use the advice of PVABs while satisfying their duties to their clients. The 2020 Rule was intended “to enhance the transparency, accuracy, and completeness” of proxy voting advice and is explained in detail in our memorandum found [here](#). Although the 2022 Final Rule rescinds much of the 2020 Rule, it leaves intact both the codification that proxy voting advice constitutes a solicitation under the Exchange Act and the requirement that PVABs must disclose any conflicts of interest to avail themselves of the filing exemption. With the 2022 Final Rule, the SEC is striking a different balance, reasoning that PVABs have already implemented policies that are aimed at the same goals, which makes it unnecessary for the PVABs to incur the additional cost, time delay, and uncertainty that these 2020 Rule provisions may have imposed.

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