

SEC AMENDS PROXY RULES TO ADDRESS PROXY VOTING ADVISORS AND ISSUES GUIDANCE FOR INVESTMENT ADVISERS ON USE OF AUTOMATED VOTING PLATFORMS

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On Wednesday, the SEC adopted [amendments to the proxy solicitation rules](#) relating to proxy voting advisors and issued [new supplemental guidance](#) relating to the proxy voting responsibilities of investment advisers when using automated voting.

We have prepared [a client alert describing the amendments](#) and guidance in more detail. The following is a brief summary.

The proxy rule amendments effected three principal changes:

- They codify the SEC’s previous interpretation that proxy voting advice produced by “proxy voting advice businesses” (PVABs or proxy advisory firms), such as ISS and Glass Lewis, generally constitutes a “solicitation” for purposes of Rule 14a-1(l) of the Securities Exchange Act of 1934.
- In order for PVABs to avoid the information and filing requirements of the proxy rules, PVABs must:
 - Disclose material conflicts of interest to their clients as well as any policies and procedures used to identify, and steps taken to address, any material conflicts.
 - Establish and publicly disclose policies and procedures reasonably designed to allow registrants that are the subject of the PVABs’ voting advice to be able to access that advice prior to or at the same time as the advice is disseminated to the advisory firms’ clients.
 - Adopt and publicly disclose policies and procedures reasonably designed to ensure the PVABs provide their clients with a mechanism by which they can reasonably be expected to become aware of any written responses by registrants to such voting advice, in a timely manner before the shareholder meeting or other action.

- Third, the amended rules make clear that the failure to disclose material information regarding proxy voting advice, “such as the proxy voting advice business’s methodology, sources of information, or conflicts of interest” could, depending on the particular facts and circumstances, be misleading within the meaning of Rule 14a-9, the antifraud rule.

The amended rules will become effective 60 days after publication in the Federal Register. However, PVABs will not be required to comply with the above requirements (described in the 2d bullet) until December 1, 2021.

Supplemental guidance regarding automated voting. The new supplemental guidance addresses the proxy voting responsibilities of investment advisers when using automated voting features offered on the electronic platforms of PVABs. The new guidance reminds advisers of their obligation to make voting decisions on an informed basis, regardless of whether an adviser utilizes automated voting features. Their policies and procedures for voting securities should be reasonably designed to allow for consideration of new material information about a matter (if received with enough time to review prior to casting a vote), whether the advisers utilize automated voting features or not. Such new information could include a registrant’s response to proxy voting advice.

The guidance indicates that advisers should consider whether their use of automated voting features is a material fact that should be disclosed to clients and, if it is, whether they are providing sufficiently specific information so that a client is able to understand the role of automated voting in the investment adviser’s exercise of voting authority granted by the client.

The supplemental guidance will become effective upon publication in the Federal Register.

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