

SEC Adopts Amendments to Proxy Voting Rules to Enhance the Timeliness and Independence of Proxy Voting Advice

JULY 18, 2022

On July 13, 2022, the SEC adopted [amendments to the 2020 proxy rules governing proxy voting advice applicable to proxy advisory firms, or proxy voting advice businesses \(“PVABs”\)](#). (You can find our blog post about the 2020 rules [here](#)).

PVABs advise shareholders on how to exercise their rights to vote on matters at public company shareholders’ meetings, and investors rely on PVABs to stay informed about company and shareholder proposals. Since the adoption of the 2020 rules establishing new requirements for PVABs, investors have expressed strong concerns about their ability to receive independent proxy voting advice in a timely manner due to requirements imposed by the 2020 rules. These amendments are expected to address those concerns while maintaining investors’ access to transparent, accurate, and materially complete information to help them determine how to vote.

The amendments rescind two portions of the 2020 rules:

- two conditions to the Rule 14a-2(b)(9) exemptions from the proxy rules’ information and filing requirements upon which PVABs often rely and the related safe harbors and exclusions from those conditions; and
- Note (e) to the Rule 14a-9 liability provisions, which set forth examples of material misstatements or omissions related to proxy voting advice.

Removing the Rule 14a-2(b)(9)(ii) Conditions for Exemptions to the Proxy Rules for Proxy Voting Advice

Rule 14a-2(b)(9)(ii) previously required that, in order to qualify for the exemptions from the proxy rules’ information and filing requirements, PVABs adopt and publicly disclose written policies and procedures reasonably designed to ensure that (1) their proxy voting advice is made available to corporations that are the subject of the advice no later than when the advice is disseminated to the PVABs’ clients and (2) the PVABs provide their clients with a means of becoming aware of any written responses by the subject corporations, in a timely manner before the relevant shareholder meeting (or if no meeting, before the votes, consents, or authorizations may be used to effect the proposed action).

In light of (1) continued concerns expressed by investors and others that the conditions set forth in Rule 14a-2(b)(9)(ii) have adverse effects on the cost, timeliness, and independence of proxy voting advice and (2) the voluntary adoption by PVABs of practices that advance the goals underlying Rule 14a-2(b)(9)(ii), the SEC concluded that the potential informational benefits to investors of those requirements do not justify their potential effects on the cost, timeliness, and independence of proxy voting advice. As a result, the SEC is rescinding Rule 14a-2(b)(9)(ii) and the related safe harbors and exclusions.

In connection with the removal of Rule 14a-2(b)(9)(ii), the SEC is also rescinding supplemental guidance to investment advisors about their proxy voting obligations issued in connection with the 2020 rules. In connection with the rescission of the supplemental guidance, the SEC noted comments received on the 2021 release proposing the amendments to the proxy rules and existing obligations and considerations regarding proxy voting under the Investment Advisers Act of 1940.

Removing Note (e) Examples to the Rule 14a-9 Liability Rule for Proxy Advice

The 2020 rules added Note (e) to the Rule 14a-9 liability rules that prohibit false or misleading statements. Note (e) cited the failure to disclose material information regarding proxy voting advice, such as a PVAB's methodology, sources of information, or conflicts of interest, as an example of an omission that can be misleading within the meaning of Rule 14a-9. The SEC emphasized that the purpose of deleting Note (e) is to address any uncertainty regarding the application of Rule 14a-9 to proxy voting advice and any misperception that Note (e) purported to determine or alter the law governing Rule 14a-9's application and scope, and to avoid any increased litigation risks and impaired independence of proxy voting advice as a result of such uncertainty. The SEC noted that deletion of Note (e) is not intended to, and does not, affect the scope of Rule 14a-9 or its application to proxy voting and that material misstatements remain subject to liability under the rule.

According to the SEC, these amendments do not represent a wholesale reversal of the 2020 rules. Proxy voting advice generally remains a solicitation and, as with any other person engaged in a solicitation, a PVAB can still remain subject to liability under Rule 14a-9 for material misstatements or omissions of fact. Furthermore, PVABs still need to satisfy Rule 14a-2(b)(9)'s conflicts of interest disclosure requirements to qualify for the exemptions from the proxy rules' information and filing requirements.

The amendments will be effective 60 days after publication in the Federal Register.

3 Min Read

Authors

[David Sakowitz](#)

[Sey-Hyo Lee](#)

[Sangil Min](#)

Related Locations

London

New York

Related Topics

Securities and Exchange Commission (SEC)

Proxy Season

Regulations

Capital Markets

Corporate Governance

Related Capabilities

Transactions

Capital Markets

Corporate Governance

Related Regions

North America

Related Professionals



David Sakowitz



Sey-Hyo Lee



Sangil Min

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.