

## SEC Revisits New Regulations Applicable to Proxy Advisory Firms

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Last year, the Securities and Exchange Commission (“SEC”) issued new regulations applicable to proxy advisory firms, including Institutional Shareholder Services (“ISS”) and Glass Lewis, that codified earlier guidance that proxy advisory firms should be deemed proxy solicitors. The new regulations stipulated, among other items, that any reports from the proxy advisors should be free from material errors and omissions, the methodologies used by the proxy advisors must be disclosed and transparent, that any conflicts of interest within the proxy advisors must be disclosed, and any non-public information relied upon for vote recommendations must be disclosed and identified. The new regulations are scheduled to become effective on December 1 of this year.

However, on June 1, 2021, new SEC Chair Gensler asked Commission staff to revisit the regulations and the classification of proxy advisors as proxy solicitors in particular. This action has the potential to overturn the regulations adopted by the SEC last year, freeing the proxy advisors from having to comply with the anti-fraud provisions of the proxy rules that were used to support the regulations summarized above. The text of Chair Gensler’s brief statement is below:

### June 1, 2021

“In September 2019, the Commission issued an interpretation and guidance addressing the application of the proxy rules to proxy voting advice businesses.<sup>1</sup> Last July, the Commission adopted amendments to Rules 14a-1(l), 14a-2(b), and 14a-9 concerning proxy voting advice.<sup>2</sup>

I am now directing the staff to consider whether to recommend further regulatory action regarding proxy voting advice. In particular, the staff should consider whether to recommend that the Commission revisit its 2020 codification of the definition of solicitation as encompassing proxy voting advice, the 2019 Interpretation and Guidance regarding that definition, and the conditions on exemptions from the information and filing requirements in the 2020 Rule Amendments, among other matters.”

We will continue to monitor this topic and will keep our readers apprised of further SEC guidance or actions on this important matter.

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<sup>1</sup> [\*Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice\*, 84 Fed. Reg. 47,416 \(Sept. 10, 2019\) \(“2019 Interpretation and Guidance”\)](#).

<sup>2</sup> [\*See Exemptions from the Proxy Rules for Proxy Voting Advice\*, 85 Fed. Reg. 55,082 \(Sept. 3, 2020\) \(“2020 Rule Amendments”\)](#)