



Regulatory Alert

Regulatory Insights



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SEC Changes to Proxy Rules

The SEC's changes to the proxy rules recognize the importance of corporate governance and the voice of investors in such matters as the election of directors, merger applications, and shareholder proposals. The final rulemaking and new proposed rule are consistent with the broader regulatory focus on effective, transparent, and timely governance (key tenets of the "G" of ESG). Further, soliciting public comment is also becoming foundational to how regulators seek input on their own rulemakings, as seen by recent RFIs issued by the CFPB and the FTC directly to consumers.

The Securities and Exchange Commission (SEC) voted on two rules related to the agency's proxy rules. In particular, the SEC adopted final amendments to the rules governing "proxy voting advice businesses" (PVABs), and separately proposed new amendments to rules governing the exclusion of shareholder proposals from proxy statements. Each of these rulemakings is outlined below.

Proxy Voting Advice – Final Rule

With the stated intent of alleviating compliance costs and improving the timeliness and independence of proxy voting advice provided to investors, the SEC adopted [amendments](#), consistent with the earlier [proposal](#) issued in November 2021, that rescind rules and guidance applicable to PVABs that were previously adopted in 2020, including:

- **Rule 14a-2(b)(9)(ii)**, and related safe harbors and exclusions, which provides PVABs with two conditions for exemption from the proxy rules' information and filing requirements:
 - PVABs must make their advice available to the companies that are the subject of their advice at or before the time that they make the advice available to their clients; and
 - PVABs must provide their clients with a mechanism by which they could reasonably be expected to become aware of any written statements by registrants who

are the subject of the advice regarding the PVAB's proxy voting advice.

- **Note (e) of Rule 14a-9 (Liability Rule)**, which provides examples of material misstatements or omissions related to proxy voting advice.
- **Supplemental Proxy Voting Guidance** to investment advisers about their proxy voting obligations as set forth in Rule 14a-2(b)(9)(ii).

The amendments and the rescission of guidance will become effective 60 days following publication of the final rule in the Federal Register.

Exclusion of Shareholder Proposals – Proposed Rule

The SEC proposed [amendments](#) to **Rule 14a-8 (Shareholder Proposal Rule)** with the stated aim of "providing a clearer framework for the application of the rule, and helping shareholders exercise their rights to submit proposals for consideration by their fellow shareholders." The amendments would revise the following three bases under which companies subject to the federal proxy rules are permitted to exclude certain shareholder proposals in their proxy statements.

- **Substantial implementation exclusion:** Exclusion of a shareholder proposal that "the company has already substantially implemented."

- The proposed amendment would clarify that proposals can be excluded if the company has already implemented the essential elements of the proposal.
- **Duplication exclusion:** Exclusion of a shareholder proposal if the proposal “substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company’s proxy materials for the same meeting.”
 - The proposed amendment would specify that a proposal “substantially duplicates” another if it “addresses the same subject matter and seeks the same objective by the same means.”
- **Resubmission exclusion:** Exclusion of a shareholder proposal if the proposal “addresses substantially the same subject matter as a proposal, or proposals, previously included in the company’s proxy materials within the preceding five calendar years” if the matter was voted on at least once in the last three years and did not receive sufficient shareholder support.
 - The proposed amendment would provide that a proposal is a resubmission if it “substantially duplicates” a prior proposal, and similar to the duplication exclusion, a proposal would “substantially duplicate” another proposal if it “addresses the same subject matter and seeks the same objective by the same means.”
 - Insufficient shareholder support in the most recent vote is proposed to mean:

- Less than 5 percent of the votes cast if previously voted on once.
- Less than 15 percent of the votes cast if previously voted on twice.
- Less than 25 percent of the votes cast if previously voted on three or more times.

Comments on the proposed rule will be accepted for a period of 30 days following publication in the Federal Register, or until September 12, 2022, whichever is later.

Please refer to:

- [SEC Press Release: SEC Adopts Amendments to Proxy Rules Governing Proxy Voting Advice](#)
- [SEC Final Rule: Proxy Voting Advice](#)
- [SEC Fact Sheet: Proxy Voting Advice](#)
- [SEC Press Release: SEC Proposes Amendments to Shareholder Proposal Rule](#)
- [SEC Proposed Rule: Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8](#)
- [SEC Fact Sheet: Shareholder Proposals under Rule 14a-8: Proposed Rules](#)

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