

MEMO# 33974

December 23, 2021

ICI Submits Comment Letter on the SEC's Proxy Advice Proposal

[33974]

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TO: ICI Members

Investment Company Directors SUBJECTS: Compliance

Disclosure

Fund Governance

Intermediary Oversight

Investment Advisers

Operations

Transfer Agency RE: ICI Submits Comment Letter on the SEC's Proxy Advice Proposal

In November, the SEC proposed changes to its 2020 proxy advice amendments.[\[1\]](#) Most notably, the proposal would rescind provisions in the 2020 amendments that would require proxy voting advice businesses (PVABs) to:

- make their advice available to the companies that are the subject of the advice at or before the time that they make the advice available to clients (e.g., funds and investment advisers); and
- provide their clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding the advice by companies.

Today, ICI filed a comment letter in response (linked below).

Background and Summary of the Proposal

PVABs provide proxy voting advice to institutional investors, including investment advisers and funds. The SEC adopted proxy advice amendments in 2020 "so that investors who use proxy voting advice receive more transparent, accurate, and complete information on which to make their voting decisions, without imposing undue costs or delays that could adversely affect the timely provision of proxy voting advice."[\[2\]](#)

The proposal would not fully unwind the 2020 amendments. But it would rescind the condition that PVABs adopt and publicly disclose written policies and procedures reasonably designed to ensure that:

- Companies that are the subject of proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the PVAB's clients; and
- Clients have a mechanism by which they can reasonably be expected to become aware of any written statements regarding the PVAB's proxy voting advice by companies, in a timely manner before the shareholder meeting.

Summary of ICI's Comment Letter

In our comment letter, we support rescission of the 2020 rule amendments that would require PVABs to make their advice available to companies and alert their clients when companies respond to that advice. We explain that we do not believe that those 2020 amendments would meaningfully improve the quality of proxy advice—rather, those amendments likely would negatively impact the timeliness and cost of that advice.

We also support rescinding the 2020 proxy voting guidance to investment advisers.^[3] The 2020 guidance requires technical disclosure about voting platforms that is not material to understanding how advisers satisfy their proxy voting responsibilities. The SEC's 2019 guidance to investment advisers is fully adequate and provides sufficient and appropriate proxy voting guidance to investment advisers.^[4]

Matthew Thornton
Associate General Counsel

endnotes

^[1] Proxy Voting Advice, SEC Release No. 34-93595 (Nov. 17, 2021) (the "proposal"), available at www.sec.gov/rules/proposed/2021/34-93595.pdf. For a more detailed summary of this proposal, see Institute Memorandum [No. 33912](#), dated November 22, 2021.

^[2] Exemptions from the Proxy Rules for Proxy Voting Advice, SEC Release No. 34-89372 (July 22, 2020) at 1, available at www.sec.gov/rules/final/2020/34-89372.pdf. The 2020 amendments: (i) codified the SEC's interpretation that proxy voting advice generally constitutes a "solicitation" within the meaning of the Securities Exchange Act of 1934; (ii) conditioned the availability of certain existing exemptions from federal proxy rule requirements for PVABs upon compliance with additional disclosure and procedural requirements; and (iii) amended the proxy antifraud rule to clarify when the failure to disclose certain information in proxy voting advice may be considered misleading. For a more detailed summary of the 2020 amendments, see Institute Memorandum [No. 32636](#), dated July 24, 2020.

^[3] Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, SEC Release No. IA-5547 (July 22, 2020) ("2020 guidance"), available at www.sec.gov/rules/policy/2020/ia-5547.pdf.

^[4] Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, SEC Release No. IA-5325 (Aug. 21, 2019) ("2019 guidance"), available at www.sec.gov/rules/interp/2019/ia-5325.pdf.

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