

SEC Finalizes Rules for Proxy Advisors

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If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Maurice Blanco
+1 212 450 4086
maurice.blanco@davispolk.com

Joseph A. Hall
+1 212 450 4565
joseph.hall@davispolk.com

Michael Kaplan
+1 212 450 4111
michael.kaplan@davispolk.com

Richard D. Truesdell, Jr.
+1 212 450 4674
richard.truesdell@davispolk.com

Ning Chiu
+1 212 450 4908
ning.chiu@davispolk.com

Betty Moy Huber
+1 212 450 4764
betty.huber@davispolk.com

Paula H. Simpkins
+1 212 450 4055
paula.simpkins@davispolk.com

The SEC voted 3-to-1 on Wednesday to adopt **final rules** governing proxy advisors. Under the rules, proxy advice is subject to the federal proxy rules and constitutes a “solicitation,” but may be exempt from the filing and information requirements of the proxy rules.

In order to benefit from the exemptions, a proxy advisor must:

- Publicly disclose its material conflicts of interest;
- Publicly disclose the policies by which it will provide a subject company with the advice no later than when the advice is sent to the advisor’s clients; and
- Publicly disclose the policies by which it will notify its clients in a timely manner before the meeting of the availability of a company’s written statement in response to the advisor’s advice.

Unlike the November 2019 **proposed rules**, which we discussed in a prior **memo**, the final rules do not require that advisors give companies an opportunity to preview and provide feedback on the advice before it is issued to clients. The final rules also do not require that advisors include a company’s own written statement (or hyperlink) with the advice in the voting report.

Advice relating to custom voting policies that are specifically developed for an advisor’s client and reflect the client’s proprietary information, and advice on certain M&A transactions and contested matters, is generally exempt. The SEC

acknowledges that one advisor currently provides S&P 500 companies the opportunity to review its draft recommendations and another advisor permits limited pre-publication review of certain facts underlying its recommendation, and encourages both advisors to continue to do so although not required under the rules.

All proxy advice will be subject to the anti-fraud provisions of the federal securities laws when an advisor fails to disclose material information regarding its advice, such as the advisor’s methodology, sources of information or conflicts of interest.

The SEC also issued **supplemental guidance** to aid investment advisors in executing their proxy voting responsibilities in light of these rules. See our related **client alert**.

The final rules are effective 60 days after publication in the *Federal Register*, but compliance by proxy advisors is not required until December 1, 2021. The supplemental guidance is effective upon publication in the *Federal Register*.