

Proposed Legislation on Oversight of Proxy Advisory Firms

May 16, 2016 | Client Update | 2-minute read

The [Proxy Advisory Firm Reform Act](#), introduced by Congressman Sean Duffy (R-Wisconsin), is on the agenda for a hearing on Tuesday by the House Financial Services Committee.

Under the proposed legislation, proxy advisory firms must register with the SEC and provide information that would be made public about their procedures for advising their clients, including whether and how they consider the size of a company when making decisions. Not surprisingly because it is a constant source of criticism, the application must describe any potential or actual conflicts of interest. This includes whether they engage in consulting services and the amount of those revenues, as well as a list of their 20 largest clients and how they prevent such clients from having “undue influence.”

The registration could be denied if the SEC believes a firm does not have adequate financial or management resources to consistently deliver services “with accuracy and integrity” and to materially comply with their own procedures. Firms could also face censure, suspension or restrictions on their businesses for failure to comply.

The legislation would give every company access to the draft voting recommendations with an opportunity to provide comments to the person who actually develops the recommendation. Firms must have ombudsmen to review complaints about accuracy and resolve them in a timely fashion, before voting takes place.

In addition, the SEC must promulgate rules requiring written policies designed to address and disclose conflicts. The lengthy list of disclosure includes how proxy advisory firms are compensated by clients, the provision of consulting services, business relationships or any other interests between a firm, their associates and any clients, how proxy voting policies are formed and in particular how large clients provide input, and how the firms issue recommendations to the companies where they also provide consulting services.

The SEC rules would also prohibit conditioning voting recommendations on issuers purchasing services, or modifying or threatening any recommendations based on whether issuers bought subscription services.

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.

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