

SEC to Discuss Proxy Adviser Regulation and Resubmission Thresholds for Shareholder Proposals at November 5, 2019 Open Meeting

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by Jason Brenkert

Yesterday the SEC announced the agenda for its upcoming open meeting to be held on Tuesday, November 5 at 10:00 a.m. EST. All SEC open meetings are webcast and a hyperlink to the webcast will be posted to www.sec.gov shortly before the start of a meeting. The SEC has indicated that the agenda, in part, will focus on “continued efforts to facilitate constructive shareholder engagement and enhance transparency, improve disclosures, and increase confidence in the proxy process.” We expect to provide further analysis following the open meeting and on any proposals once they are published.

The specific agenda items for the open meeting are as follows:

Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice. The SEC will consider whether to propose amendments to the proxy solicitation rules regarding proxy voting advice. The proposed amendments “would provide for disclosure of material conflicts of interest and set forth procedures to facilitate issuer and shareholder engagement, to provide clarity to market participants, and to improve the information provided to investors.”

Investment advisers that use proxy advisory firms rely on the independence of these firms’ recommendations and analysis and may be wary of any proposal that may serve as an impediment to or have influence over the content of proxy advisory firms’ reports.

Procedural Requirements and Resubmission Thresholds for Shareholder

Proposals under Exchange Act Rule 14a-8. The SEC will consider whether to propose amendments to the shareholder proposal rules to “modernize the submission and resubmission requirements and to update procedural requirements.”

Rule 14a-8 regulates the circumstances under which a public company must include a shareholder proposal in the company’s proxy materials for a meeting of its shareholders. The rule sets forth various procedural and substantive requirements that may give the company one or more grounds to exclude such a proposal. Although the rule only requires companies to file their reasons for exclusion with the SEC, companies have

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developed a practice of submitting no-action requests in conjunction with these submissions.

On September 6, 2019, the SEC announced two significant changes to its approach to responding to public companies' no-action requests seeking support for excluding shareholder proposals from company proxy materials pursuant to Rule 14a-8: (1) the SEC will now respond to some requests orally, and (2) the SEC may decline to state a view with respect to some requests. We expect that the proposed amendments will be aimed at addressing some of the additional uncertainty that the September 6th guidance introduced into the shareholder proposal process.

Investment Adviser Advertisements; Compensation for Solicitations. The SEC will consider whether to propose amendments under the Investment Advisers Act of 1940 to the rules that prohibit certain investment adviser advertisements and payments to solicitors.

SEC consideration of the regulatory framework governing investment adviser advertising has been a long-time coming with the industry open to regulations that would modernize the relevant rules.