

SEC ANNOUNCES RE-EXAMINATION OF PROXY ADVISOR RULES AND INTERPRETATIONS

Jun 02, 2021

Newly installed Chairman Gary Gensler announced on June 1, 2021 that he is directing the SEC staff to consider whether to revisit its recent actions with respect to proxy voting advice businesses, including:

- The SEC's 2020 proxy rule amendments
 - As discussed in our [July 24, 2020 blog](#), the amendments codified the SEC's interpretation that the definition of solicitation encompassed proxy voting advice and established requirements for exemptions from the information and filing requirements.
- The SEC's 2019 [interpretation and guidance](#) regarding solicitation
 - As discussed in our [October 2019 newsletter](#), the SEC stated its view that proxy voting advice generally constitutes a "solicitation" subject to the federal proxy rules and explained what proxy advisers should consider disclosing in order to avoid a potential violation of Rule 14a-9 where the failure to disclose such information would render the advice materially false or misleading.

As a result of the Chairman's announcement, the SEC staff [announced](#) later on June 1 that it has decided that it will not recommend enforcement action based on the 2019 interpretation and guidance or the 2020 amendments during this period of staff review.

In addition, the SEC staff announced that if the 2020 amendments ultimately remain in place, it will not recommend enforcement action based on their conditions for a reasonable period after any resumption by ISS of its litigation challenging the 2020 amendments and 2019 interpretation and guidance.

Following these announcements, Commissioners Pierce and Roisman issued a [statement](#) questioning why the SEC would revisit the amendments only ten months after their adoption or

depart from “its longstanding legal interpretation about proxy solicitation.” They believed the SEC had considered relevant policy arguments, including opposition, and expressed the hope that any future actions “will not deprive users of proxy voting advice of information they need to properly consider such advice or lead them to make decisions based on misinformation.”

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MEET THE TEAM



R. Randall Wang

St. Louis

randy.wang@bclplaw.com

[+1 314 259 2149](tel:+13142592149)

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