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September 17, 2020

The Honorable Mike Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Maxine Waters
Chairwoman
The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Exemptions From the Proxy Rules for Proxy Voting Advice*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission) entitled “Exemptions From the Proxy Rules for Proxy Voting Advice” (RIN: 3235-AM50). We received the rule on July 29, 2020. It was published in the *Federal Register* as a final rule on September 3, 2020. 85 Fed. Reg. 55082. The effective date of the rule is November 2, 2020.

According to the Commission, the final rule amends the Commission’s rules governing proxy solicitations 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. The Commission states that the final rule amendments add conditions to the availability of certain existing exemptions from the information and filing requirements of the federal proxy rules that are commonly used by proxy voting advice businesses. Further, according to the Commission, these conditions require compliance with disclosure and procedural requirements, including conflicts of interest disclosures by proxy voting advice businesses and two principles-based requirements. The Commission also states that the final rule amendments codify the Commission’s interpretation that proxy voting advice generally constitutes a solicitation within the meaning of the Securities Exchange Act of 1934. 15 U.S.C. 78a *et seq.* Finally, according to the Commission the final rule amendments clarify when the failure to

disclose certain information in proxy voting advice may be considered misleading within the meaning of the antifraud provision of the proxy rules, depending upon the particular facts and circumstances.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Vanessa A. Countryman
Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
“EXEMPTIONS FROM THE PROXY RULES
FOR PROXY VOTING ADVICE”
(RIN: 3235-AM50)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) conducted an economic analysis of this final rule. This analysis included the definition of a baseline against which the costs, benefits, and the impact on efficiency, competition, and capital formation of the final amendments could be measured.

The Commission stated that it expects the rule to generate benefits compared to the baseline for clients of proxy voting advice businesses and investors, and, albeit to a lesser extent, for proxy voting advice businesses and registrants. Further, the Commission stated that it expects that the largest benefits will come from conditioning availability of the exemptions in Rules 14a-2(b)(1) and (b)(3) on proxy voting advice businesses providing certain disclosures and maintaining certain policies and procedures. According to the Commission, final rule amendments to the definition of solicitation in Rule 14a-1(l) and to Rule 14a-9 represent less significant changes from the existing baseline and will likely result in more modest benefits for proxy voting advice businesses and their clients. The Commission further explained that the purpose of the final rule amendments is to improve the information available to shareholders when making voting decisions, which could ultimately result in more efficient investment outcomes. In addition, the Commission stated that the extent of the benefits will depend on the existing practices of proxy voting advice businesses and how they choose to implement the required disclosures and procedures (as well as the existing practices of their clients and how they, in turn, adjust), but that it believes that the improved transparency that the final rule will generate will be beneficial for proxy voting advice businesses' clients and will likely improve the overall proxy voting process.

Regarding costs, the Commission stated that it expects that proxy voting advice businesses as well as registrants will incur direct costs as a result of the final rule. Further, according to the Commission, to the extent the final rule imposes any direct costs on proxy voting advice businesses that are passed along to clients, the final rule could impose indirect costs on clients of proxy voting advice businesses, including investment advisers and institutional investors, and the underlying investors they serve, if applicable.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Commission prepared a Regulatory Flexibility Analysis. The analysis included (1) a statement of the needs for and objectives of the final rule; (2) a statement of the significant issues raised by public comments; (3) a description of the small entities subject to the final rule; (4) the projected reporting, recordkeeping, and other compliance requirements; and (5) a statement on agency actions taken to minimize effect on small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory commission, the Commission is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On December 4, 2019, the Commission published a proposed rule. 84 Fed. Reg. 66518. The Commission stated that it received many comments on the proposed rule. The Commission responded to the comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Commission determined that the final rule contains information collection requirements (ICRs) under the Act. The Commission stated it submitted the ICRs to the Office of Management and Budget (OMB) for review. The ICRs are associated with Regulation 14A (Commission Rules 14a–1 through 14a–21 and Schedule 14A) (OMB Control No. 3235–0059). The Commission estimates the total annual compliance burden of the ICRs for the final rule amendments will require approximately 803,956 burden hours, an increase of 252,855 hours.

Statutory authorization for the rule

The Commission promulgated this final rule pursuant to sections 3(b), 14, 16, 23(a), and 36 of the Securities Exchange Act of 1934, as amended. See 15 U.S.C. §§ 78c, 78n, 78p, 78w, 78mm.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory commission, the Commission is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory commission, the Commission is not subject to the Order.