

BRIEFING: US SECURITIES AND EXCHANGE COMMISSION

- Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8
- Amendments to the Proxy Rules for Proxy Voting Advice

PROPOSED CHANGES

On November 5th 2019, the U.S. Securities and Exchange Commission voted 3-2 to propose rules that would amend: (1) Rule 14a-8 (also known as the shareholder proposals rule); and (2) the regulations governing proxy voting advice.

These amendments make several significant changes to the existing rules governing shareholder proposals and proxy advisors. The proposed changes that the PRI is focused on in particular include:

Shareholder Resubmission Thresholds

The proposed changes to the 14a-8 resubmission thresholds would dramatically increase the portion of the vote a proposal must receive to be resubmitted in subsequent years after the initial submission:

Current:

- Resubmission thresholds of 3% of the vote for matters previously voted on once; 6% for matters voted on twice; 10% for matters voted on three or more times in the last five years

Proposed:

- Increase thresholds to 5%, 15% and 25% for matters voted on once, twice and three or more times in the last five years; and
- Allow for exclusion of a proposal that has been previously voted on three or more times in the last five years, notwithstanding having received at least 25% of the votes cast on its most recent submission, if the proposal: received less than 50% of the votes cast and experienced a decline in support of 10% or more compared to the preceding vote

In addition, the Commission proposed increasing the dollar value of the stock an investor must hold in order to be eligible to submit a proposal for inclusion in the company's proxy materials (shareholder submission thresholds).

Proxy Advice Rules

The SEC also adopted proposed rules that affect the proxy advisor business. The rules would, among other changes:

- Require that registrants review and provide feedback on proxy voting advice before it is issued (with the length of the review period dependent on the number of days between the filing of the definitive proxy statement and the date of the shareholder meeting).
- Registrants may request that proxy advisors include in their voting advice a hyperlink directing the recipient of the advice to a written statement that sets forth the registrant's or soliciting person's views on the proxy voting advice.

The proposed rules would also require disclosure of certain conflicts of interests by proxy advisors; clarify that the SEC's anti-fraud rules apply to proxy voting recommendations; state that proxy voting advice that makes recommendations for voting are covered by the terms "solicit" and "solicitation."

Both proposed rules will be followed by a 60-day public comment period.

PRI'S VIEWS

The PRI strongly opposes these changes, which may seriously limit the ability to build support for ESG proposals, and urges the Commission to preserve the independence of proxy voting advice.

The shareholder proposal process is critical to the advancement of ESG integration in the US market and fulfilment of the second PRI principle – active ownership. It enables investors to engage the companies they own on issues such as due diligence, corporate disclosure, research and development, and climate change.

It often takes several years for the investor community to appreciate the importance of an emerging ESG topic and integrate the appropriate response to shareholder proposals into their voting decisions. This would have the effect of cutting off discussion of emerging issues before investors have the chance to analyse them and integrate the latest thinking into voting behavior.

Requiring proxy advisory firms to allow companies to review and comment on voting recommendations before investors see them potentially undermines investors' access to independent advice on matters brought to a vote in annual elections.

The PRI encourages you to submit comments, which you can do by sending an email to rule-comments@sec.gov. Please connect with our policy staff for further information.

- Will Martindale, Director of Policy & Research, will.martindale@unpri.org
- Colleen Orr, Policy Analyst, colleen.orr@unpri.org