

June 2, 2021

# SEC Staff Suspends Enforcement of Proxy Voting Advice Guidance and Rule Changes Pending Ongoing Review

In 2019, the SEC issued guidance on, and in 2020, amended, the proxy rules regarding the treatment of proxy voting advice as proxy solicitations.<sup>1</sup> On June 1, 2021, the Staff of the SEC's Division of Corporation Finance announced its intent to forego enforcement of such guidance and rules as follows:<sup>2</sup>

- at the direction of SEC Chair Gary Gensler, the Staff is considering whether to revisit its 2019 guidance and 2020 amendments and issue further regulatory actions in this area;
- while any further regulatory action is under consideration, the Staff will not recommend enforcement actions based on the 2019 guidance or the 2020 amendments; and
- if any such new regulatory action leaves the exemption conditions set forth in the 2020 amendments in place with the current December 1, 2021 compliance date, the Staff will not recommend any enforcement action based on those conditions for a reasonable period of time after the resumption by Institutional Shareholder Services (ISS) of its challenge of the 2020 amendments and the 2019 guidance.<sup>3</sup>

We will continue to monitor developments in this space.

\* \* \*

<sup>1</sup> Please see our prior client alerts, [SEC Issues Guidance on Proxy Voting Responsibilities of Investment Advisers and the Applicability of Proxy Rules to Proxy Voting Advice](#), and [SEC Adopts Final Rules on Proxy Voting Advice and Related Guidance on Investment Adviser Voting Responsibilities](#).

<sup>2</sup> The SEC's Division of Corporation Finance Statement on Compliance with the Commission's 2019 Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice and Amended Rules 14a-1(a), 14a-2(b), 14a-9 is available [here](#).

<sup>3</sup> ISS is challenging both the 2019 guidance and the 2020 amendments on the grounds that they, among other things, exceed the SEC's statutory authority, are procedurally improper, are "arbitrary and capricious" because the SEC could have used the existing regulatory structure provided by the Investment Advisers Act of 1940 to address any purported concerns with proxy advice, and violate the First Amendment to the extent they compel proxy advisers to share their recommendations with issuers and disseminate issuers' responses.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

**Mark S. Bergman**  
+44-20-7367-1601  
[mbergman@paulweiss.com](mailto:mbergman@paulweiss.com)

**Christopher J. Cummings**  
+1-212-373-3434  
[ccummings@paulweiss.com](mailto:ccummings@paulweiss.com)

**David S. Huntington**  
+1-212-373-3124  
[dhuntington@paulweiss.com](mailto:dhuntington@paulweiss.com)

**Brian M. Janson**  
+1-212-373-3588  
[bjanson@paulweiss.com](mailto:bjanson@paulweiss.com)

**Raphael M. Russo**  
+1-212-373-3309  
[rrusso@paulweiss.com](mailto:rrusso@paulweiss.com)

**Tracey A. Zaccone**  
+1-212-373-3085  
[tzaccone@paulweiss.com](mailto:tzaccone@paulweiss.com)

**Frances F. Mi**  
+1-212-373-2185  
[fmi@paulweiss.com](mailto:fmi@paulweiss.com)

*Practice Management Consultant Jane Danek contributed to this Client Memorandum.*