



Congress of the United States
House of Representatives
Washington, DC 20515

February 2, 2022

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: Proposed Amendments to 2020 Proxy Advisor Rule

Dear Chair Gensler:

We write to express our deep concerns regarding the Commission's recent action to propose amendments to the rules finalized in 2020 relating to proxy voting advice businesses (2020 Proxy Advisor Rule).¹ The Securities and Exchange Commission's ("SEC" or "Commission") decision to reverse course on the Commission-passed 2020 Proxy Advisor Rule is misguided and is further tainted by the rushed manner in which it was pursued.

The 2020 Proxy Advisor Rule took important steps to correct flaws in the proxy advisory industry. The reforms were crafted carefully to ensure that proxy advisors could continue to provide informed voting advice to their clients while allowing those subject to that advice to ensure the accuracy of the information underpinning vote recommendations.

The Commission passed the 2020 rule after a decade of deliberation about how to regulate proxy advisors. Since the 2010 "Concept Release on the U.S. Proxy System,"² the SEC engaged in a series of roundtable discussions³ and a rigorous rulemaking process⁴ that resulted in a thoughtful and modest rulemaking to bring needed transparency, accuracy, completeness, and accountability to the formulation of proxy voting advice. The 2020 final rule was modified significantly from its initial proposed rule following discussion and feedback from proxy advisors, institutional investors, academics, and others.⁵

¹ <https://www.sec.gov/rules/proposed/2021/34-93595.pdf>

² Release No. 34-62495, Concept Release on the U.S. Proxy System (7/14/10), available at: <https://www.sec.gov/rules/concept/2010/34-62495fr.pdf>.

³ Roundtable on Proxy Advisory Services (12/5/13), available at: <https://www.sec.gov/news/otherwebcasts/2013/proxy-advisory-services-roundtable-120513.shtml>; Roundtable on the Proxy Process (11/15/18), available at: <https://www.sec.gov/proxy-roundtable-2018..>

⁴ Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (11/5/19), available at: <https://www.sec.gov/rules/proposed/2019/34-87457.pdf> (proposal); <https://www.sec.gov/rules/final/2020/34-89372.pdf> (adoption).

⁵ Paul Rose and Christopher J. Walker, "Revisiting the SEC's Proxy Advisor Rule" (12/3/21), available at: <https://corpgov.law.harvard.edu/2021/12/03/revisiting-the-secs-proxy-advisor-rule/>

By contrast, under your leadership, the SEC has taken seemingly abrupt action to dismantle the 2020 rule before these changes could be implemented. The SEC cannot complete an objective review of the impact of the 2020 rule without the rule going into effect. This haste raises the question as to what the Commission's justification for proposing amendments to the rule is in the first place.

Further, the SEC issued a 30-day comment period for the proposed amendments, a period of time that is wholly insufficient to solicit substantive feedback reflective of the views of a wide swath of stakeholders. As Commissioner Hester Peirce pointed out in a recent speech, the Obama-era standard for public solicitation under the Administrative Procedure Act (APA) was 60 days.⁶ This rulemaking also comes at a time when the Commission currently has comment periods open for *nine* different proposals, many of which also affect the same parties who wish to provide substantive input on the proxy voting proposal. The SEC should not rush major rulemakings with severely truncated comment periods.

Taken together, the process around the SEC's actions regarding the proposed amendments to the 2020 Proxy Advisor Rule appear to boldly and blatantly disregard precedent, procedure, and common practice. It appears that the SEC is purposefully taking steps to unravel an important rule simply because it was passed under previous Commission leadership – an overtly political act. To further this goal, the SEC also appears to be acting without deference to well-established norms of APA procedure, a process for which you expressed respect multiple times when you testified at the House Financial Services Committee hearing on October 5, 2021.

We urge the SEC to reverse course on its proposed amendments and to implement and enforce the 2020 rules relating to proxy voting advice businesses. If the SEC fails to meet this request, we ask that, at minimum, you address the process concerns raised above in a formal response to this letter within two weeks of receipt.

Sincerely,



Bryan Steil
Member of Congress



Bill Huizenga
Member of Congress

⁶ Commissioner Hester M. Peirce, "Rat Farms and Rule Comments – Statement on Comment Period Lengths" (12/10/21), available at: <https://www.sec.gov/news/statement/peirce-rat-farms-and-rule-comments-121021>.