SEC May Scale Back Proxy Advisory Firm Regulation

The Financial Times recently reported that the Securities and Exchange Commission (SEC) is expected to eliminate the requirement that proxy advisory firms (PAFs) preview their vote recommendations with companies for feedback, as would be required under a proposed rule regulating PAFs. The SEC has not confirmed this report.

On November 5, 2019, the SEC issued a proposed rule which would require PAFs to give companies either three or five days (depending on the number of days the proxy is filed in advance of the annual shareholder meeting) to review and provide feedback on a PAF's proxy voting advice prior to its publication. Note, the SEC's proposed rule is further described in Meridian Client Update dated November 26, 2019. According to a report by the Financial Times on April 29, 2020, the SEC is expected to abandon this requirement. If true, the SEC would be bowing to the concerted efforts of many institutional shareholders, activist shareholders and governance experts who have criticized the preview requirement as fundamentally undermining the independence of PAFs' voting recommendations.

Even without the proposed rule's preview requirement, companies currently have the ability to contest a PAF's adverse vote recommendations through an amended proxy filing or 8-K filing. However, these filings may occur after votes have already been cast under a PAF's robo-voting process (i.e., upon issuance of a PAF's proxy report, the PAF will automatically submit proxy votes on behalf of some their institutional clients). We understand that votes cast through the robo-voting process are often difficult to recall by the affected shareholder. To mitigate this issue, the Financial Times further reported that the SEC may revise its proposed rule to include a so-called "speed bump" as mentioned in remarks made by Commissioner Elad Roisman on March 10, 2020. The speed bump would require a PAF to temporarily disable its robo-voting process. This pause on robo-voting would allow companies time after publication of a PAF's report, but before institutional investors have cast their votes, to contest adverse vote recommendations.

The Financial Times reported that people familiar with the SEC's rulemaking discussions cautioned that the rulemaking is "in flux and could change in the weeks ahead", which means the preview requirement could remain in any final rule adopted by the SEC.

Meridian comment. The report that the SEC may revise its proposed rule is not unexpected. As we anticipated, investors and investor groups filed a significant number of comment letters that are strongly critical of the current SEC proposal. The SEC has received investor pushback from both hedge fund activists, such as Daniel Loeb (Third Point) and Paul Singer (Elliott Management), as well as traditional asset managers, such as T. Rowe Price and CalPERS. The SEC appears to be contemplating a revised rule that would balance investor views against the conflicting views of business groups and issuers that argue that proxy advisors wield too much power over proxy voting.

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