



Comments of the Regulatory Action Center

Re: Exemptions from the Proxy Rules for Proxy Voting Advice

Docket ID: SEC-2019-1821-0001

January 31, 2020

The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulations on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government bureaus to which they are entitled to contribute.

On behalf of over 5.7 million activists nationwide, FreedomWorks Foundation appreciates the opportunity to offer these comments regarding the notice and request for comments on the Exemptions from the Proxy Rules for Proxy Voting Advice (SEC-2019-1821-0001). This notice seeks comment on the proposed amendments to the Securities and Exchange Commission (SEC) rules governing proxy solicitations in an effort to help ensure that proxy voting advice businesses (PVABs) do not misinform investors. We are writing in strong opposition to the proposed rule.

On its face, the very premise of the proposed rule is deeply flawed. It is entirely predicated on the fallacious belief that investors need to be protected from themselves and that centralized federal control over proxy solicitation is the best means of protection. As we will show, not only are worries of fraud by PVABs practically unfounded, but the methods proposed in the rule would be ineffective and damaging to the financial services sector. Furthermore, nearly all of the requests for regulation have come from corporations, not investors. Subsequently, we urge the Commission to table the proposed rule and reconsider the decision to reform the current system.

What the proposed rule amounts to is centralized regulation of advice, seeking to protect investors from being presented with “false” or “misleading” information by their PVABs. Although the purpose of the proposed rule may arguably be justified, such a policy would immediately run into enforcement issues. First of all, beyond “conflicts of interest,” the proposed rule is suspiciously vague as to what constitutes bad advice or “misleading information” that might be deserving of admonishment by the Commission. Regardless of the intentions of the SEC, as written, the proposed rule has the potential to lead to situations where the Commission would be arbitrarily and capriciously judging the validity of PVAB advice based on hindsight.



Furthermore, it is important to note that - more likely than not - the nature of the rule will result in significant litigation, should it go into effect.

It is often easy to look backwards and point to where things went wrong; this is particularly true of the financial services sector. In hindsight, it is easy to see that the Great Recession was caused by a subprime mortgage crisis spurred by high-risk lending. But in 2007, this was not as readily understood, and, as a result, investment advisors often gave clients what would end up becoming bad advice, but was not bad advice when it was given based on the information at hand. Under the proposed rule, those advisors who gave what would become bad advice to investors could be penalized for “misleading” investors when, in reality, no one was being misled. Rather, the advisors made a gamble that turned out to be a flop based on the information at hand. They should not be penalized for this by the government. After all, the market provides the best mechanism by which financial institutions like PVABs are punished for making bad decisions.

Although some provide other services, the primary product that PVABs sell is information and advice. They tell investors how they should vote and, in some circumstances, vote for them in shareholder meetings. This means that, for a PVAB to survive in a relatively competitive marketplace of proxy solicitation services, they must provide a product that consumers trust: good advice. Following this logic, it becomes clear that the market has a built in mechanism that does exactly what the Commission proposes to do via top-down regulation. Should a PVABs “misinform” or “defraud” investors, it is quite unlikely that said firm would remain in business for very long. In this sense, the Commission is dedicating considerable effort and taxpayer money in an attempt to resolve a non-issue that has a built in resolution mechanism.

Investors who choose to relegate their fiduciary responsibility to a PVAB do so at their own risk. Just as the initial investment is a calculated risk, electing to use a PVAB -- and deciding which PVAB to use -- is a choice that each investor must make themselves. It should never be the federal government’s responsibility to protect investors from themselves, and this proposed rule seeks to do just that.

FreedomWorks Foundation is proud to join like-minded individuals and groups in opposing the administration's efforts to more stringently regulate proxy voting advice businesses. This administration has made effective inroads at combating fraud, waste, and abuse by the regulatory state and FreedomWorks Foundation looks forward to working with the Commission in the future to continue cutting red tape and rolling back those regulations that are most damaging to the American people.



Respectfully submitted,

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