
Sixth Circuit Upholds SEC's Proxy Advisor Rule Repeal, Creating Split With Fifth Circuit

Date: 10/15/24

On September 10, 2024, in *Chamber of Commerce of United States v. Securities and Exchange Commission (SEC)*, the U.S. Court of Appeals for the Sixth Circuit upheld the SEC's partial rescission of enhanced conflict-of-interest disclosure requirements for Proxy Voting Advice Businesses.

In doing so, the Sixth Circuit broke from the U.S. Court of Appeals for the Fifth Circuit, which, earlier this year in *National Association of Manufacturers v. SEC*, held that the rescission was arbitrary and capricious under the Administrative Procedure Act (APA), lacking adequate justification. In *Chamber of Commerce*, however, the Sixth Circuit upheld the rescission as neither (i) substantively deficient, because the rescission was not arbitrary or capricious under the APA and because the SEC sufficiently analyzed the rescission's economic consequences under the Securities Exchange Act of 1934, nor (ii) procedurally deficient, because the SEC did not violate the APA's procedural requirements despite providing only 31 days for the public to comment on the rescission.

The decision creates a circuit conflict that may ultimately need to be resolved by the United States Supreme Court.

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