

367.368 Disclosure requirement when proxy advisory service not solely in the interest of shareholders or is materially different from advice provided to different clients.

- (1) A proxy advisory service is not solely in the interest of shareholders of a company if the service:
 - (a) Is wholly or partly based on, or otherwise takes into account, one (1) or more nonpecuniary interests or subordinates the financial interests of shareholders to other objectives, including sacrificing investment returns or undertaking additional investment risk to promote or further nonpecuniary interests;
 - (b) Involves providing a voting recommendation with respect to a shareholder-sponsored proposal that:
 1. Is inconsistent with the voting recommendation of the company's board of directors or a board committee composed of a majority of the company's independent directors; and
 2. Does not include a written economic analysis of the financial impact on shareholders of the proposal; or
 - (c) Advises against a company proposal to elect a governing person unless the proxy advisor affirmatively states that the proxy advisory service rendered such advice solely in the interest of the shareholders of the company.
- (2) If a proxy advisor provides a proxy advisory service that is not solely in the interest of shareholders as provided in subsection (1) of this section, the proxy advisor shall:
 - (a) Include, in writing or by electronic means, a disclosure to each shareholder or entity or other person acting on behalf of a shareholder receiving the proxy advisory service that:
 1. Conspicuously states that pursuant to subsection (1) of this section the proxy advisory service is not being provided solely in the interest of shareholders and that the advice subordinates the financial interests of shareholders to other objectives, including sacrificing investment returns or undertaking additional investment risk to promote one (1) or more nonpecuniary interests; and
 2. Explains, with particularity, the basis of the proxy advisor's advice concerning each recommendation, including but not limited to the company or companies for which the advice applies to and the nonpecuniary interests used in the basis of the advice; and
 - (b) Immediately provide a copy of the disclosure required under paragraph (a) of this subsection to the company that is subject to the proxy advisory service.
- (3) If the proxy advisor provides materially different advice to different clients who have not expressly requested proxy advisory services for a nonpecuniary interest, the advisor shall:
 - (a) If applicable, comply with the disclosure requirements in subsections (1) and (2) of this section; and
 - (b) Notify, in writing or by electronic means, each shareholder or entity or other person acting on behalf of a shareholder receiving the proxy advisory service,

the company that is subject to the materially different advice provided by the proxy advisory service, and the Attorney General, of the materially different advice and disclose the advice or recommendation that is:

1. Provided solely in the interest of shareholders; and
2. Supported by an economic analysis performed and relied upon by the proxy advisor.

Effective: July 15, 2026

History: Created 2026 Ky. Acts ch. 10, sec. 2, effective July 15, 2026.