



NIRI National Urges Public Companies to Write to the SEC

The SEC is unlikely to take action on equity transparency or proxy reform unless issuers directly express their view.

By Ted Allen

One of NIRI's four mission areas is advocacy on behalf of the investor relations profession. In line with this, the NIRI National Board of Directors meets privately in Washington, D.C. each September with the U.S. Securities and Exchange Commission to discuss key regulatory issues.

One of the key takeaways from this year's visit is that the SEC must hear directly from IROs and public companies about their regulatory concerns. In particular, NIRI members and their companies are encouraged to write letters to SEC officials and members of Congress in support of greater equity ownership transparency and proxy system reform. (More information about these issues and comment letter templates can be found at: <https://www.niri.org/advocacy>.)

Long Position Disclosures

At the recent SEC meeting, NIRI's Board members outlined their case for the modernization of the 13(f) rules, which require institutions with more than \$100 million in U.S. equity investments to report their holdings. In 1979, the SEC set a deadline of 45 days after the end of each quarter for institutions to file these reports. While technological innovations since then have made it possible for institutions to track their holdings on a nearly real-time basis, this deadline has not been updated. Meanwhile, institutional ownership of U.S. companies has risen to about 70 percent, and the arrival of high-speed, computer-assisted trading and the availability of "dark pools" and other trading venues has made it easier for fund managers to quietly move in and out of stock positions. NIRI asked the SEC to consider a NYSE proposal to transition from quarterly to monthly reporting for 13(f) filers and to shorten the reporting deadline from 45 to 15 days. The staff did not appear open to this concept, noting that changing the 13(f) rules would likely prompt some investors, such as Warren Buffett and well-known hedge funds, to file more confidential treatment requests, which would consume more SEC staff time.

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Disclosure of Activist Stakes and Short Positions

On a related issue, NIRI voiced support for the Brokaw Act, which would shorten the 13(d) deadline for activists to report when they obtain more than 5 percent of a company's stock. The current deadline of 10 days is a relic of the 1968 Williams Act and has remained in place while other major countries such as the U.K. and Germany have adopted shorter deadlines. The Brokaw Act calls for a two business day deadline and for modernizing the SEC's definition of beneficial ownership to include derivatives, swaps, and short positions. In response, the SEC staff said activists have argued that shortening the 13(d) deadline would make it more expensive for them to build significant positions and thus handicap their ability to take on unresponsive corporate boards.

NIRI also urged the SEC to implement a Dodd-Frank Act provision to require 13(f) filers to publicly disclose their short positions each quarter. NIRI, NYSE, and Nasdaq have filed rulemaking petitions that ask the SEC to adopt such a disclosure rule, and while 14 companies also have written comment letters in support, additional advocacy in this area is required.

Proxy System Reform

NIRI's representatives also urged the SEC to exercise greater oversight over proxy advisory firms and to take action to modernize the proxy system. NIRI believes that all issuers should have an opportunity to review proxy report drafts for factual accuracy before investors vote based on potentially flawed information. The largest U.S. proxy advisor, ISS, only allows S&P 500 firms an opportunity to review drafts. The other major proxy firm, Glass Lewis, allows some issuers to review the underlying data that are included in the reports, but does not share its draft recommendations, and then charges companies if they want to see the final report.

The SEC staff was not overly receptive, noting that they haven't heard complaints from institutional investors about report quality and have received few specific complaints from issuers. The SEC staff said companies should contact Raymond Be, a senior counsel in the Corporation Finance Division, if proxy advisor report errors are not corrected or to express other concerns.

Ted Allen is NIRI's director of regulatory affairs and practice resources; tallen@niri.org.

Next-Generation Ownership: Beyond Shareholder Identification to Insight and Actionable Intelligence

*By Allison Gosman / Marketing Associate,
Nasdaq Corporate Solutions*



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To help you with insights into how IROs navigate today's complex landscape, we have prepared this report - [Next-Generation Ownership: Beyond Shareholder Identification to Insight and Actionable Intelligence](#).

Our report shows how, with Nasdaq Corporate Solutions, data becomes actionable intelligence, helping provide IROs with strategic insight that their executive teams and boards need and expect.

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