



**NATIONAL INVESTOR RELATIONS INSTITUTE
FINANCIAL REGULATORY REFORM ISSUES**

Mission

NIRI is dedicated to advancing the practice of investor relations (IR) and professional competency and stature of its members.

Advocacy Agenda

1. NIRI supports equity ownership position transparency – full and frequent ownership disclosure by *all* institutional investors (mutual funds, hedge funds, activist investors, etc.) including:
 - Long equity positions
 - Short equity positions
 - Derivative positions
2. NIRI supports a comprehensive evaluation of the current shareholder voting and communications system in order to improve engagement between public companies and their shareholders.
3. NIRI supports increased transparency and regulatory oversight of proxy advisory services and the processes used by these firms in generating voting recommendations. Investment managers should take greater responsibility for their voting decisions and provide more disclosure about their proxy votes and use of proxy advisors.
4. NIRI supports a comprehensive evaluation of market stabilizing systems and processes used during times of extreme volatility including some form of short-selling circuit breakers.
5. NIRI supports initiatives to strengthen the initial public offering (IPO) market in the United States, while also protecting investors from fraud.
6. NIRI supports initiatives to modernize and streamline corporate disclosure rules, and NIRI encourages the SEC to use its regulatory discretion to minimize the burden of new disclosure mandates, such as those required by the Dodd-Frank Act.

Background

1. Ownership Transparency

NIRI recognizes the need for greater transparency within the investment community, and supports a reporting regime that promotes more timely and frequent long position reporting, as well as commensurate full and fair short position disclosure. Section 929X of the Dodd-Frank Act requires the Commission to promulgate rules obligating investment managers to publicly report short sale activity *at a minimum* of once every month. NIRI also believes that the benefits to investors and public companies of long-position reporting justify a similarly substantial increase of the frequency of Form 13F reporting.

- a. Short Sales Disclosure. In accordance with its mission, the SEC should require the same level of disclosure from *all* institutional investors (investment funds, hedge funds, activists etc.) maintaining short equity positions as are required of the funds that maintain long equity positions. NIRI believes short sale reporting and corresponding share lending reporting should be publicly available in the same manner as long position reporting. In addition, NIRI believes long and short sale reporting should occur on a more frequent basis, and that requirements be the same for all investors.
- b. Form 13F Revisions. Publicly traded companies currently operate in an environment of great transparency governed by federal, state, and stock exchange rules and regulations. Current SEC rules generally require institutional investors to disclose share ownership positions on a quarterly basis (Form 13F), with an exception made for those that petition the SEC to delay these disclosures on the basis of confidentiality. NIRI, along with the Society of Corporate Secretaries and Governance Professionals and NYSE Euronext, has petitioned the SEC to shorten the reporting deadline from 45 days to two business days after the end of the calendar quarter.

Given the advances in recordkeeping technology in the more than 30 years since the 13F reporting requirement was adopted, there does not seem to be any justification for the existing 45-day deadline. The practical effect of this rule is that an investment manager may, for example, buy or sell shares on January 1 and not have to report that holding change until May 15, more than 19 weeks after the transaction. Many U.S. companies hold their annual meetings during this period, when shareholder communications are even more crucial.

Investor advocates have raised concerns about preserving the confidentiality of their trading strategies. As an alternative to shortening the 13F reporting deadline to two days, NIRI would support the confidential reporting of equity positions to the SEC on a rolling basis with a 30-day delay to protect confidentiality. After receiving this information from an investor, the SEC would then privately forward this equity information to the specific issuers where the positions are held. A 30-day delay would ensure fairness for all market participants while providing more current information to issuers about the institutions that hold their shares. Reporting rules also should be strictly enforced with meaningful penalties for non-compliance.

- c. Form 13D Revisions. Current SEC requirements require a Schedule 13D to be filed by any person or group of persons that becomes a 5 percent holder within 10 days after crossing the 5 percent threshold. Based on technology improvements over the last several decades and the speed at which information now flows, NIRI sees no reason for such a delay in reporting this material shareholder ownership information. NIRI believes reporting rules should be amended to reduce the reporting requirement to 2 days from the current 10 days. This reporting requirement should be expanded to include long and short selling information, as well as share lending.

2. Shareholder Communications

More than 75 percent of the shares of public companies are held in "street name," meaning that they are held in the name of a third-party financial intermediary, such as a broker or a bank. This system ensures an efficient transfer of shares among owners and promotes liquidity in our capital markets.

Unfortunately, short selling practices, complex derivative transactions, empty voting, and an outdated shareholder voting process are now challenging the integrity of the corporate election system. Brokers and other financial institutions are not able to accurately account for shares that are entitled to vote on important corporate matters. Hedge funds and other financial players are using share lending and swap transactions to separate economic interest from voting rights, in order to influence the results of a shareholder meeting. Empty voting schemes that offer the opportunity to manipulate corporate governance affairs and stock prices should be prohibited.

The current shareholder voting and communications system is more than 30 years old and needs to be updated and reformed. Public companies are not able to use modern technology to communicate with individual investors who own shares in their enterprises. For the protection of individual investors and other participants in our capital markets, the SEC should focus on the following changes:

- a. Direct Communication with Individual Investors. The SEC should eliminate the "Non-Objecting Beneficial Owner" (NOBO) and "Objecting Beneficial Owner" (OBO) classifications, which greatly hinder the ability of companies to communicate with their retail investors. Public companies should have access to contact information for all of their beneficial owners and should be permitted to communicate with them directly.

If these classifications are eliminated, those beneficial owners wishing to remain anonymous should be permitted to register their shares in a nominee account (or enter into a custodial arrangement) with their broker, bank, or other third-party intermediary. Shareholders who are currently classified as OBOs should have adequate notice of the elimination of their OBO status to permit them to decide whether to establish a nominee account or enter into a custodial arrangement.

Communications with beneficial owners should only be for purposes involving the corporate affairs of a company. Federal privacy regulations should apply to the use of beneficial owner information received from a broker or a bank.

- b. Voting By Retail Investors. The SEC should continue to examine how to protect the vote of the retail investor, particularly in the case of unvoted shares. Institutional investors generally vote almost 100 percent of the time in order to meet their legal responsibilities. This voting is facilitated by electronic systems, and also aided by third-party proxy advisory services. Retail investors have no similar voting facilitators or proxy advisory services, and, in fact, often have no motivation to vote their shares. Current statistics indicate that only 14 percent of retail shareholder accounts vote their proxy ballots, according to Broadridge Financial Solutions. The SEC should encourage participation by brokers in the new Enhanced Broker Internet Platform/Investor Mailbox program, which may dramatically increase retail shareholder proxy voting participation. NIRI believes that broker and investment advisor websites, which individual shareholders increasingly look to as the sole portal for their investment needs, offer one of the most viable paths for engaging individual shareholders in the voting process.
- c. Transparent Proxy Fees. Brokers, banks, and other intermediaries should not stand in the way of direct communications between companies and the beneficial owners of their securities. Companies should have the ability to determine the distributors of their communications, and all costs for the system should be transparent and verifiable. Fees should be monitored and evaluated regularly by an oversight body that seeks to promote fairness and competition. Unfortunately, the NYSE Proxy Fee Advisory Committee's recommended rule changes, which were approved by the SEC in October 2013, did not call for an independent audit of proxy fees. NIRI believes that a third-party audit of proxy distribution fees is the best way to ensure that fees are reimbursed fairly, equitably, and objectively, thereby eliminating the vested interests of those involved directly and indirectly in the process. Without transparency, many issuers will continue to question the accuracy of proxy fees.
- d. Proxy Voting Integrity. The proxy voting process should be fully transparent and verifiable, starting with the compilation of a reconciled list of beneficial owners eligible to vote and ending with the final tabulation of votes cast at a shareholder meeting. The vote counts on matters before a shareholder meeting should be auditable and capable of third-party verification, so that a validation of the final tabulation of the votes of both registered and beneficial owners can occur. Proxy votes should continue to be counted and tabulated using the current practices governed by state law, including, when necessary, the services of an independent inspector of elections.
- e. Modernize Definition of Beneficial Ownership. The SEC should undertake a Section 13 rulemaking project to modernize the definition of beneficial ownership to include securities-based swaps. NIRI agrees with former SEC Chair Mary

Schapiro that it is important to bring the Commission's beneficial ownership rules up to date "in light of modern investment strategies and innovative financial products." The SEC should require disclosure of both voting and economic ownership along with both positive and negative economic ownership.

- f. Investor Education Initiative. A national campaign to educate investors in areas of shareholder communications, shareholder responsibilities, and regulatory requirements is needed to ensure that institutional and individual shareholders are responsible and informed owners.

3. Proxy Advisory Services

The SEC, through either a rulemaking proceeding or staff guidance, should exercise greater oversight over proxy advisory services and the processes used by these firms and their investor clients in generating voting recommendations and making voting decisions. NIRI believes that investors may not be protected adequately because of the current deficiencies in regulatory oversight and transparency that exist within the proxy advisory industry. In order to protect investors, consideration should be given to the following recommendations to improve the regulatory oversight and transparency of proxy advisory firms:

Proxy Advisory Firms

- a. All proxy advisory firms should be required to register under the Investment Advisers Act of 1940, and be subject to a regulatory framework that reflects the unique role that proxy advisors perform in giving advice with respect to voting securities. This regulatory framework should, at a minimum, address conflicts of interest and internal controls, and provide for public disclosure of the policies, procedures, guidelines, and methodologies used by each proxy advisory firm to develop its voting recommendations.
- b. Proxy advisory firms should provide each public company with an advance copy (i.e., 5 business days before issuance) of any report that includes a proxy voting recommendation about such company, to permit the company to review and comment on the factual accuracy of statements made in the report.
- c. Proxy advisory firms should track the operating, financial, and strategic performance of issuers continuously, so that recommendations are made in the context of how the company is being managed, not solely on the basis of an isolated analysis of a particular issue or a governance policy standard.
- d. Proxy advisors should communicate all possible positive and negative consequences should their recommendations result in a vote against management in a manner similar to forward-looking risk factors.

- e. Proxy advisor methodologies should be transparent and made available to issuers *at no charge*, so that investors can better evaluate their recommendations, and issuers can offer suggestions that would improve these methodologies.
- f. Proxy advisors should fully disclose all potential conflicts of interest (including whether an investor client is a proponent of a shareholder proposal or a “vote no” campaign) in sufficient detail (and in specific research reports) to allow assessment of the proxy advisor’s independence. Proxy advisors should recuse themselves when clear conflicts exist.
- g. Proxy advisors should maintain records and certify the votes made by their clients.
- h. Proxy advisors should make available on their websites without charge (or file with the Commission) a copy of each report that contains a proxy voting recommendation about a public company, no later than 90 days after the shareholder meeting to which the voting recommendation relates.

Institutional Investors

- a. The SEC should withdraw the two staff no-action letters issued in 2004 that are generally read as permitting investment advisers to vote client proxies in accordance with pre-determined policies based on the recommendations of an independent third party.
- b. The Commission should issue a rule (or staff guidance) emphasizing the responsibility of each registered investment adviser to exercise appropriate oversight over its proxy voting process, including its use of proxy advisory firms, to ensure that its voting decisions with respect to client securities are in the best interests of its clients. Investment advisers should provide disclosure (at least annually) on how they utilize the advice of proxy advisory firms in making their voting decisions.
- c. To encourage competition and new entries into the concentrated proxy advisor market, the SEC should promote a regime where professional investors seek advice from multiple proxy advisors if they rely on proxy firms.
- d. The Commission should promote the concept that professional investors can rely on their overall assessment of the management of the company, which would allow votes consistent with management recommendations if they are generally happy with the direction of the company.
- e. Institutional investors should have ongoing communications with companies regarding governance preferences rather than just relying on the advice of proxy advisors.

- f. As mandated by Section 951 of the Dodd-Frank Act, the SEC should finalize a rule that would require all investment managers (who are Form 13F filers) to annually disclose their proxy votes on “Say on Pay” and certain other executive compensation matters. This rule would increase transparency and provide greater insight to issuers about the proxy voting preferences of their investors. Given the importance of voting transparency, the SEC should consider extending this requirement to include votes cast by 13F filers on other proxy matters.

4. **Market Volatility**

NIRI supports a comprehensive evaluation of market stabilizing systems and processes during times of extreme volatility, including implementation of some form of short selling circuit breakers during these periods.

5. **Public Capital Markets**

NIRI supports initiatives to strengthen and facilitate capital formation through rules and regulations that create robust public capital markets from pre-IPO through the IPO process to mature public companies operating under a structure that is properly regulated, fuels corporate growth, and is globally competitive.

NIRI supports the intent of the Jumpstart Our Business Startups (JOBS) Act of 2012, which should lead to more public offerings and greater opportunities for IR professionals. However, NIRI is concerned that the law could open the door to more fraud or “boiler room” investment ads, as well as abuse of “accredited” investors related to the law’s new “crowd-funding” capital raising process. NIRI encourages the SEC to monitor these potential consequences, educate investors about new types of fraud, and work to maintain shareholders’ faith in our capital markets.

6. **Disclosure Reform**

NIRI supports efforts to modernize and streamline corporate disclosure rules, and NIRI encourages the SEC to use its regulatory discretion to minimize the burden of new disclosure mandates, such as those required by the Dodd-Frank Act.

NIRI was encouraged by SEC Chair Mary Jo White’s remarks in October 2013 and February 2014 about the need to overhaul corporate disclosure rules. NIRI believes that the current Regulation S-K rules could be streamlined in a way that could reduce costs for issuers while still ensuring that all investors receive material information on an equal basis. NIRI urges the Commission to make disclosure reform a priority as the SEC completes its Dodd-Frank rulemaking.

While NIRI recognizes that the Commission is required by the Dodd-Frank Act to issue new disclosure rules on executive pay, resource extraction payments, and other topics, NIRI urges the SEC to proceed carefully and fully consider suggestions from issuers and their advocates

about reducing compliance burdens while carrying out the intent of the legislation. As NIRI noted in its comment letter on the SEC's draft CEO pay ratio rule, the SEC should resist imposing significant compliance costs on issuers to produce non-material disclosure that would not be useful for most investors.

About the National Investor Relations Institute

Founded in 1969, NIRI is the professional association of corporate officers and investor relations consultants responsible for communications among corporate management, shareholders, securities analysts, and other financial community constituents. The largest professional investor relations association in the world, NIRI's more than 3,300 members represent 1,600 publicly held companies and \$9 trillion in stock market capitalization.

Approved by NIRI Board of Directors, March 2014.