

THE AGE OF DISRUPTION

TRANSFORMING DISRUPTION INTO OPPORTUNITY

Disruption in Washington: What Can IR Professionals Expect from Regulators and Lawmakers in 2021?

APPENDIX

Appendix: NIRI Advocacy 101

NIRI Advocacy / Who's Who

NIRI Advocacy Priorities

- 13F Modernization
- 13D Reform
- Working Group / Public Roundtable on Ownership Transparency Issues
- Proxy “Plumbing” / NOBO-OBO Reform
- Defense of New Proxy Advisory Rules
- SEC Public Company Advisory Committee
- ESG Disclosure

SEC Primer

- SEC Role / Mission
- Organization
- Commissioners
- Divisions

Overview of NIRI's Advocacy Efforts

One of NIRI's Four Primary Mission Areas

- Aggregates the opinions of NIRI members and represents IR in Washington, D.C.
- Collaborates with other professional organizations and business groups

Advocacy Committee of the NIRI Board of Directors

- Works to ensure that IR has a seat at the table on critical industry issues in Washington
- Identifies emerging advocacy issues and determines the appropriate approach

Advocacy Ambassadors

- Liaise with Advocacy Committee on advocacy issues and priorities
- Build support for NIRI's advocacy priorities at the chapter level
- Assist their chapters in preparing comment letters to SEC and/or members of Congress
- Answer chapter members' questions about regulatory or advocacy issues

NIRI Advocacy Who's Who

Board Advocacy Committee

- Pat Davidson, Chair
- Ted Allen, JD, Staff
- Deb Wasser, IRC, Board Liaison
- Lisa Rose, IRC

NIRI Advocacy Ambassadors

- Dan Aldridge, Atlanta
- Miranda Weeks, Capital Area
- David Dragics, Capital Area
- Barbara Noverini, Chicago
- John Chevalier, Cincinnati
- Christina Kmetko, Cleveland
- Lisa Rose, Cleveland
- Shannon Gaycheck, Cleveland
- James Bragg, CT/Westchester
- Hala Elsherbini, D*FW
- Wesley Harris, Houston
- Terri MacInnis, Los Angeles
- Laura Kiernan, New York
- Mark Donohue, Philadelphia
- Allison Wey, San Diego
- Edelita Tichepco, San Francisco
- Kelly Reisdorf, Twin Cities
- Mark Collinson, Orange County
- Moriah Shilton, N. California
- Deb Pawlowski, Virtual

Advocacy Agenda for 2021-22

- Seek Bipartisan Support for Legislation to Modernize 13F
- Prod the SEC to Convene Working Group/Public Roundtable on Ownership Transparency Issues
- Support Senator Baldwin's 13D Modernization Bill
- Encourage the SEC to Adopt Incremental "Grow NOBO" Changes and Enact Broader Proxy System Reforms
- Maintain the SEC's Proxy Advisor Rules and Shareholder Proposal Reforms
- Support Establishment of Public Company Advisory Committee at the SEC
- Resist One-Size-Fits-All Disclosure Mandates on ESG

13F Modernization

What it is

- Form 13F ownership disclosure rules have not been updated since the 1970s.
- Current SEC rules require institutional investment managers (who hold more than \$100M in certain securities) to disclose their share ownership positions on a quarterly basis.
- Given technology advancements, NIRI believes the 13F reporting deadline should be shortened from 45 days to **4 business days** after the end of the calendar quarter. We also believe that investors should provide monthly reporting directly to issuers.
- We believe the SEC should require 13F filers to provide public disclosure of their short positions.

Why it's important

- The outdated 13F reporting rules preclude companies from obtaining timely information on their investors' long and short positions, important for allocating C-suite or director time for investor meetings or call requests, as well as for proxy outreach purposes and the targeting of prospective investors.

What NIRI is doing

- In 2013, NIRI petitioned the SEC to shorten the 45-day reporting period.
- In 2015, NIRI petitioned the SEC to require the disclosure of short positions.

13D Reform – Brokaw Act

What it is

- Current SEC requirements require a Schedule 13D to be filed by any investor or group of investors that becomes a 5% holder within 10 days after crossing the 5% threshold.
- Given the technology improvements over the last several decades and speed of information today, NIRI believes the reporting period should be shortened to four days (or less).
- We also believe that 13D reporting should be expanded to include derivative transactions.
- Senator Baldwin (D-WI) is expected to reintroduce her Brokaw Act bill in early 2021; it would cut the 13D reporting period from 10 to four business days, expand disclosure to include derivatives, and address “wolfpack” tactics by activist funds.

Why it's important

- Hedge fund activism has risen significantly over the past decade, with more proxy contests being threatened, which creates a greater urgency for companies to be aware of developing activist positions and engage with their shareholders.
- This legislation would level the playing field between activists and the companies they target, while also ensuring that other investors have more timely information about activist campaigns to make more informed decisions about actions to take.

What NIRI is doing

- NIRI submitted a statement to the Senate Banking Committee in July 2018 urging lawmakers to support 13D reform.
- NIRI, which advocated for 13D reform during Capitol Hill visits in 2018 and 2019, will support 13D legislation in 2021.

OBO-NOBO Reform/Proxy “Plumbing”

What it is

- Issuers are unable to learn the identity of their institutional and retail investors who are deemed “objecting beneficial owners” (OBOs); companies must pay uncompetitive fees to a financial intermediary when they wish to communicate with these investors.
- Companies may pay an intermediary to obtain lists of non-objecting beneficial owners (NOBOs), but corporate use of those lists is limited.
- Some retail investors are classified as OBOs by brokers without fully realizing their identities are hidden to the companies they invest in.
- The SEC has convened several working groups to look at OBO-NOBO, end-to-end vote confirmation, and other proxy “plumbing” issues.

What NIRI is doing

- NIRI is working with the Society for Corporate Governance and other organizations to encourage the SEC to take steps to modernize the OBO-NOBO rules and to expand corporate use of NOBO lists.

New Proxy Advisory Firm Rules

What it is

- In July 2020, the SEC approved new regulations on proxy advisory firms and guidance for the institutional investors who hire them. The final rules require a proxy firm to provide all issuers a copy of its proxy voting advice, at no charge, no later than the time it is disseminated to the proxy firm's clients. The rules will take effect in December 2021.
- The rules also will require proxy advisors to provide notice to their clients that an issuer has filed, or has informed the proxy advisor, that it intends to submit a response to that proxy advice.
- In September 2020, ISS filed an amended federal lawsuit to block the final rules, contending that the SEC exceeded its legal authority in adopting them.
- NIRI believes the SEC has statutory authority to regulate proxy advisory firms that exert enormous influence on shareholder voting and that the SEC's reforms are reasonably designed to facilitate more transparent and better-informed shareholder decision-making, consistent with the longstanding objectives of the securities laws.

What NIRI is doing

- On November 6, 2020, NIRI joined the U.S. Chamber of Commerce and other business organizations in an amici curiae brief that defends the SEC's new regulations on proxy advisory firms. A court decision in this case is expected in Q1 2021.

New Shareholder Proposal Rules

What it is

- In September 2020, the SEC voted to modernize the Rule 14a-8 rules on shareholder proposals.
- **Stricter Ownership Standards:** An investor must continuously own a \$25,000 stake in a company for at least one year (or a \$15,000 stake for two years or a \$2,000 stake for at least three years).
- **Tighter Resubmission Thresholds:** A resolution must receive at least 5 percent support during its first year on a company's proxy ballot in order to be resubmitted during the following three years. Proposals submitted two (or three times) within the prior five years will need to earn 15 percent (or 25 percent) support, respectively, in order to be resubmitted during the next three years.
- Proponents also must indicate availability for engagement with the company.
- New rules take effect for annual meetings after January 1, 2022.

What NIRI is doing

- NIRI was part of a Chamber-led coalition that supported these new rules and will resist efforts to roll back these reforms in 2021.

SEC Primer

U.S. Government's Securities Law Oversight and Enforcement Agency

- Established by the Securities Exchange Act of 1934.
- Interprets and enforces the federal laws that govern the U.S. securities industry.
- Brings civil enforcement actions against individuals and companies for securities law violations.
- Oversees required disclosures by public companies.

Tripartite Mission

- Protect investors.
- Maintain fair, orderly and efficient markets.
- Facilitate capital formation necessary to sustain economic growth.

SEC Organization

- **Five commissioners** appointed by the President with the advice and consent of the Senate.
- The President designates one commissioner as Chair.
- Commissioners serve **staggered five-year terms**.
- A maximum of three commissioners can belong to the President's political party.
- Has **five Divisions and 25 Offices**; 4,000+ staff in D.C. and 11 regional offices.

Current SEC Commissioners

Name	Title	Party	Took Office	Term Expires
(to be nominated)	Chairman			
Caroline Crenshaw	Commissioner	Democrat	–	June 5, 2024
Allison Herren Lee		Democrat	June 20, 2019	June 5, 2022
Hester Peirce		Republican	January 11, 2018	June 5, 2025
Elad L. Roisman		Republican	September 11, 2018	June 5, 2023

SEC Divisions

- Corporation Finance
- Enforcement
- Investment Management
- Trading and Markets
- Economic and Risk Analysis

Division of Corporation Finance

- Ensures that investors are provided with material information to make informed investment decisions.
- Oversees corporate disclosure of information to the investing public.
- Oversees the registration of transactions made by companies.
- Interprets securities laws.
- Monitors activities of the accounting profession.
- Provides guidance and counseling to registrants and the public to help them comply with securities laws.

Division of Enforcement

- Conducts investigations into possible securities law violations.
- Recommends that the SEC brings civil actions in federal court or as administrative proceedings before an administrative law judge.
- Prosecutes these cases on behalf of the SEC.

Division of Investment Management

- Oversees registered investment companies (e.g., mutual funds), registered investment advisors, and other investment products and services.
- Administers various federal securities laws; in particular, the Investment Company Act of 1940 and Investment Advisers Act of 1940.
- Responsible for investor protection, and for promoting capital formation through oversight and regulation of the U.S. investment management industry.
- Oversees Form 13F filings by investment managers; reviews requests for confidential treatment.

Division of Trading and Markets

- Establishes and maintains standards for fair, orderly, and efficient markets.
- Regulates the major securities market participants, including broker-dealers, self-regulatory organizations (such as stock exchanges, FINRA, and clearing agencies), and transfer agents.
- Interprets proposed changes to regulations and monitors industry operations.

Division of Economic and Risk Analysis

- Provides economic analyses to support SEC rulemaking and policy development.
- Provides research, analysis, risk assessment and data analytics to support the SEC on matters presenting the biggest perceived risks in litigation, examinations and registrant review.

Division Involvement in Advocacy Issues

Issue	Corporation Finance	Enforcement	Investment Management	Trading and Markets	Economic and Risk Analysis
13F Modernization			X	X	
Ownership Transparency Issues (short positions)			X	X	
13D Modernization	X		X		
Proxy System Reforms (OBO-NOBO, etc.)	X				
Proxy Advisory Firms	X		X		
Shareholder Proposals	X				
ESG Disclosure	X				