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SEC Adopts Final Proxy Advisor Rules

All Public Companies Will Have a Chance to Review Proxy Research

In a long-awaited victory for public companies, the U.S. Securities and Exchange Commission voted 3-1 on July 22 to approve new regulations on proxy advisory firms and to issue additional guidance for the institutional investors who hire them.

While the SEC did not mandate a formal pre-publication draft review process, the final rules will 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 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.

These new standards are a significant improvement over current practice, whereby one of the major proxy advisory firms (ISS) provides a review opportunity only to S&P 500 companies, while the other major proxy advisor (Glass Lewis) has charged issuers for access to its proxy voting advice.

"Today's actions ensure that those who take on the responsibility of investing and voting on behalf of our Main Street investors have the accurate and decision useful information necessary to make an informed voting decision for the benefit of those investors," SEC Chairman Jay Clayton said during an open meeting.

The rules, which take effect in December 2021, require proxy firms to provide more disclosure of conflicts of interest. The Commission also reaffirmed its longstanding view that proxy voting advice generally constitutes a solicitation under the SEC's proxy rules, and made clear that a proxy advisor's failure to disclose material information about its proxy voting advice may violate the antifraud provision of the proxy rules.

In addition to the new proxy rules, the SEC's Investment Management Division issued new guidance to the institutional investment advisors who hire proxy firms regarding the use of automated voting platforms. These automated systems allow for the pre-population of voting instructions without clients taking any additional action; a 2018

research paper reported that 175 institutions with \$5 trillion in assets under management voted with ISS more than 95 percent of the time. The new SEC guidance calls on investment advisers to provide additional disclosures to their retail investor beneficiaries and to review procedures for voting when an issuer provides a response.

"After more than a decade of advocacy work by dozens of members, NIRI applauds the SEC's rulemaking to modernize proxy advisor regulation and to provide institutional investors with more transparent and complete information," said NIRI President and CEO Gary LaBranche, FASAE, CAE. "This landmark decision will ensure that all issuers and their IR teams will receive appropriate access to proxy reports before proxy firm clients vote and will be able to provide responses that will be shared with those clients."

"NIRI is also grateful that the SEC is providing guidance to address investment managers' growing use of automated proxy voting platforms owned by the proxy advice firms, a concern that NIRI first raised in 2017," LaBranche said. "We are pleased that the SEC shares our concern that investment managers owe a fiduciary duty to their retail investor beneficiaries to make informed voting decisions that include consideration of issuer responses."

Resources

- [Press Release, "SEC Adopts Rule Amendments to Provide Investors Using Proxy Voting Advice More Transparent, Accurate and Complete Information," July 22, 2020.](#)
- [Final Rule, Exemptions from the Proxy Rules for Proxy Voting Advice, Release No. 34-89372; File No. S7-22-19.](#)
- [Investment Management Division, Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers.](#)

About the National Investor Relations Institute

Founded in 1969, the National Investor Relations Institute (www.niri.org) is the professional association of corporate officers and investor relations consultants responsible for communication among corporate management, shareholders, securities analysts, and other financial community constituents. NIRI is the largest professional investor relations association in the world, with more than 3,000 members representing over 1,600 publicly held companies and \$9 trillion in stock market capitalization. Through its collaborative community, NIRI advances engagement in the capital markets and drives best practices in corporate disclosures, governance, and informed investing.

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