



**August 21, 2019**

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## **SEC Releases New Guidance on Proxy Advisors**

On August 21, the U.S. Securities and Exchange Commission voted 3-2 to release new guidance to investment managers regarding their use of proxy advisory firms. The guidance is a significant victory for issuers, who have been urging the SEC to exercise greater oversight over proxy advisors for more than a decade.

The SEC approved two separate guidance documents during an open meeting. The first guidance is directed at investment managers and outlines steps that they could take to ensure they are fulfilling their fiduciary duties to their investor clients when they hire proxy advisory firms. The second guidance reiterates that proxy voting advice is subject to the SEC's proxy solicitation rules and the anti-fraud provisions of Rule 14a-9, which prohibits false or misleading disclosures, including material omissions, in proxy materials.

Chairman Jay Clayton noted that the SEC acted following a lengthy deliberative process that included a proxy voting roundtable in 2018 and the consideration of hundreds of comment letters from institutional investors, retail shareholders, and companies.

"Voting is a key component of shareholder engagement and investing more generally," Clayton said. "[I]nvestment advisers who assume voting authority have duties of care and loyalty to their clients in fulfilling their voting obligations. The guidance we are considering today emphasizes these fundamental truths."

Clayton noted that this guidance is just a "first step" and that the SEC plans to do a rulemaking and consider additional conditions to the exemption from the solicitation rules that proxy advisors now have.

Commissioner Elad Roisman, who oversees the SEC's ongoing review of proxy voting issues, stressed the agency's intent to protect the interests of retail investors. "These Main Street investors who invest their money in funds are the ones who will benefit from (or bear the cost of) these advisers' voting decisions," Roisman said. "In essence, I believe it is our job as regulators to help ensure that such advisers vote proxies in a

manner consistent with their fiduciary obligations and that the proxy voting advice upon which they rely is complete and based on accurate information.”

NIRI President and CEO Gary A. LaBranche, FASAE, CAE, praised the SEC action. “NIRI commends the SEC for thoughtfully examining how investment managers use proxy advisory firms and for releasing this long-overdue guidance to help ensure that proxy voting recommendations are based on complete and accurate information, including input from issuers,” LaBranche said.

“NIRI also is pleased to hear from Chairman Clayton that the SEC plans to do more rulemaking in this area,” LaBranche said. “We encourage the SEC to adopt additional safeguards to ensure that all issuers are treated fairly and that investors receive the most accurate advice possible.”

Commissioners Robert J. Jackson, Jr. and Allison Herren Lee voted against the release of the new guidance and expressed concern that the SEC action could reduce competition in the proxy advisor sector, which now has two firms that collectively control 97 percent of the U.S. market. Lee also warned that allowing for more issuer input into proxy voting recommendations could undermine the independence of that advice.

While the SEC guidance documents do not explicitly direct proxy firms to adopt new procedures, they include language that may prompt investment managers to seek policy changes that would be helpful for issuers. For instance, in the guidance for investment managers, the SEC said they should consider asking about “[t]he proxy advisory firm’s engagement with issuers, including the firm’s process for ensuring that it has complete and accurate information about the issuer and each particular matter, and the firm’s process, if any, for investment advisers to access the issuer’s views about the firm’s voting recommendations in a timely and efficient manner.”

## **Resources**

- [SEC Press Release, SEC Clarifies Investment Advisers’ Proxy Voting Responsibilities and Application of Proxy Rules to Voting Advice, August 21, 2019.](#)
- [SEC, Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, August 21, 2019.](#)
- [SEC, Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice, August 21, 2019.](#)

- [Chairman Jay Clayton, Statement at Open Meeting on Commission Guidance and Interpretation Regarding Proxy Voting and Proxy Voting Advice, August 21, 2019.](#)
- [Commissioner Elad Roisman, Statement at the Open Meeting on Commission Guidance and Interpretation Regarding Proxy Voting and Proxy Voting Advice, August 21, 2019.](#)
- [NIRI, Comment Letter to the SEC Re: Roundtable on the Proxy Voting Process, April 30, 2019.](#)

### **About the National Investor Relations Institute (NIRI)**

Founded in 1969, NIRI ([www.NIRI.org](http://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 3,300 members representing 1,600 publicly held companies and \$9 trillion in stock market capitalization.

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