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NIRI and the Issuer Community Achieve Regulatory Victory on 13(d)

The SEC today released a proposed rule to modernize Section 13(d) of the Securities Exchange Act of 1934. Under the proposal, activist investors would be required to disclose a 5% position with five (5) days of reaching that threshold. And any derivatives used for the purpose of changing or influencing the control of a public company would be treated the same as a long equity position and count towards the 5% threshold.

NIRI has worked to achieve this outcome for more than a decade.

Currently, under the 50-year-old rule, hedge funds and other activists are currently permitted a 10-day period before having to make a public filing with the SEC disclosing a 5% equity position in the shares of a public company. Large investors are also allowed to use certain derivative instruments to obtain effective control over large blocks of company stock without any public disclosure required.

Today's proposed rulemaking is an important step forward in bringing more transparency to the marketplace and closing certain 13(d) loopholes that have allowed certain investors to amass large positions in company stock without adequate public disclosure.

NIRI will submit a comment letter to the SEC during the upcoming comment period. It is unclear exactly when the new rule will go into effect, but it is likely that it will be toward the end of 2022 or early 2023.

NIRI has had many allies in its quest to modernize Section 13(d), but no one is more important than Wisconsin Senator Tammy Baldwin. Since 2017, Senator Baldwin has sponsored legislation—called the Brokaw Act—to amend the Exchange Act to shorten the disclosure deadline and close the loopholes involving derivatives. Her tireless advocacy on this issue is a major reason why the SEC issued this rule proposal today. NIRI is very appreciative of the partnership we have developed with the Senator and her very capable staff.

More information can be found below, including the 193-page rulemaking:

- SEC Fact Sheet: www.sec.gov/files/33-11030-fact-sheet.pdf
- Baldwin Press Release: www.baldwin.senate.gov/news/press-releases/senator-baldwin-applauds-sec-action-to-increase-transparency-and-strengthen-oversight-of-predatory-activist-hedge-funds
- SEC Proposed Rule: www.sec.gov/rules/proposed/2022/33-11030.pdf

About NIRI: The Association for Investor Relations

Founded in 1969, NIRI 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. The largest professional investor relations association in the world, NIRI's more than 2,800 members represent over 1,350 publicly held companies with more than \$7 trillion in stock market capitalization.