

## What's Coming in 2023: Regulatory and Advocacy Priorities For the New Year

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#### Speakers

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#### Agenda

- Advocacy Program Overview
- Legislative Fly-in
- Congressional Elections
- NIRI Legislative Activities
- SEC Rulemaking
- Q&A

#### Advocacy Program Overview

- NIRI Mission
- Benefits
- Initiatives
- Partners
- How to Participate

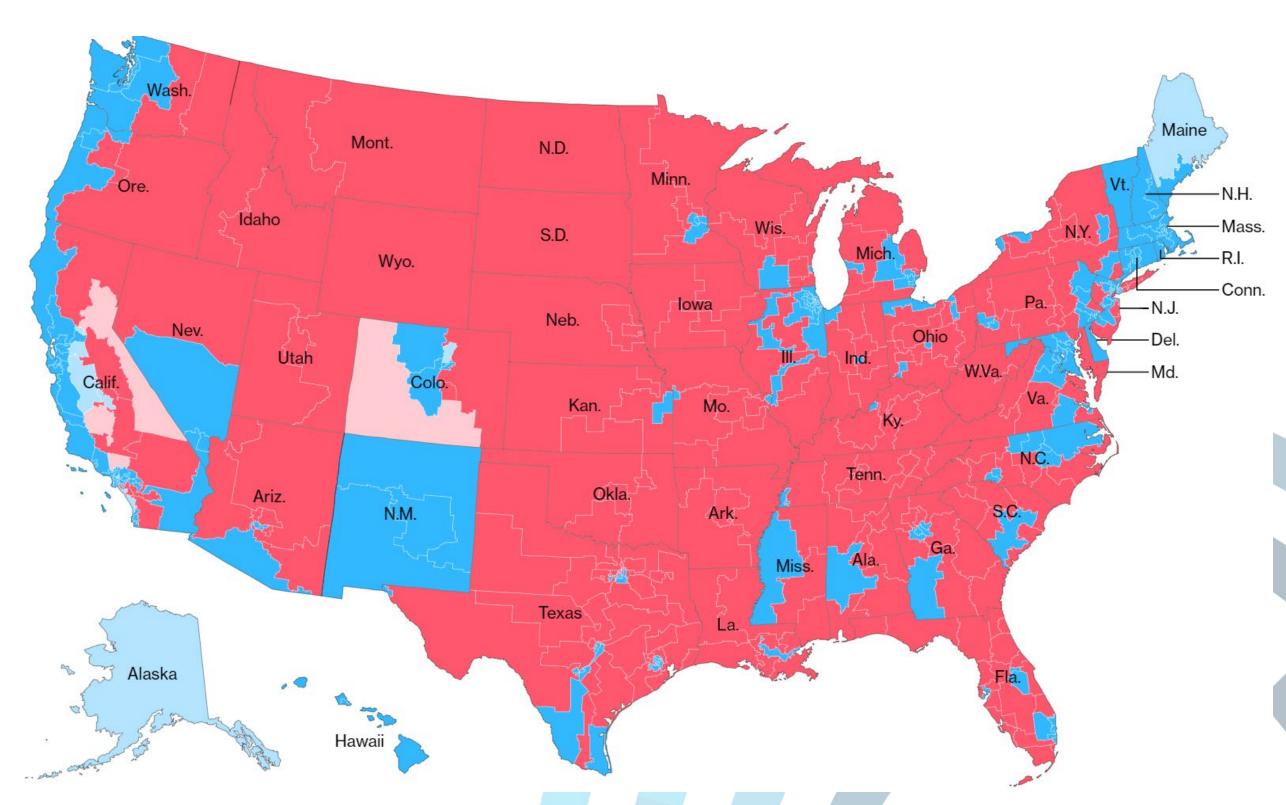
# Annual NIRI Legislative Fly-In

- Overview
- 2022 Highlights
- 2023 Plans



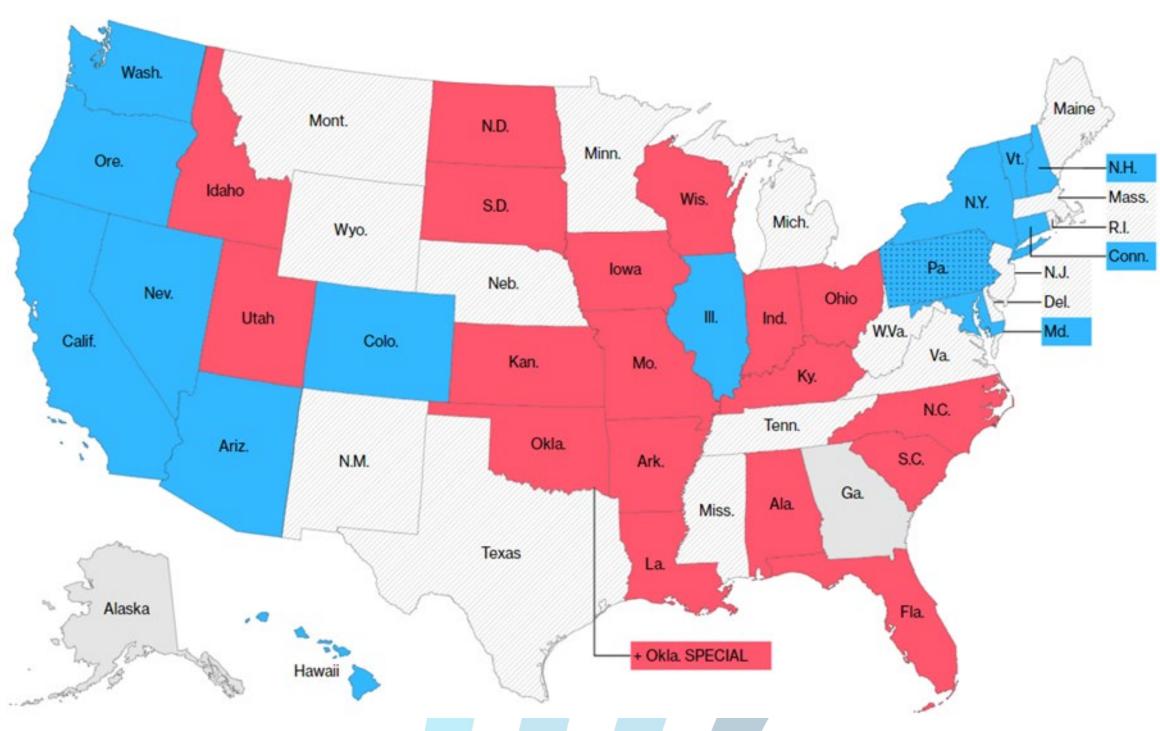
#### 2022 House Election Results

- Republicans picked up 10 seats in the 2022 election to get to 222 and achieve majority control.
- The Democrats currently have 212 seats in the House.
- There is 1 Virginia seat that is vacant and will be filled in a February special election.
- New Speaker Kevin McCarthy can only afford to lose 4 votes within his Republican conference.



#### Senate Election Results

- Democrats retained the Senate with victories in Nevada, Arizona, Pennsylvania, and Georgia.
- Democrats have 51 seats and the Republicans have 49 seats.
- Arizona Senator Kyrsten Sinema changed her party registration from Democrat to Independent after the midterm elections, although she will still caucus with the Democrats.



Source: Bloomberg

# 2023 NIRI Priorities

13(f) Modernization Legislation

Proxy Advisory Firm Legislation

SEC Public Company Advisory Committee

SEC Rulemakings (13(d), Short Position Disclosure, Climate Disclosure)

## 13(f) Modernization Legislation

- Starting Point: H.R. 4618, introduced by House Financial Services Committee Chair Maxine Waters (D-CA); bill passed out of the Committee in July 2021.
- Goal for 2023: secure Republican support for 13(f) modernization.
- Amending Waters bill to:
  - Authorize the SEC to move from quarterly disclosures to monthly disclosures and to shorten the filing deadline from 45 days to a more reasonable requirement;
  - Require the disclosure of cash-settled equity swaps in the same manner as long positions; and
  - Require the SEC to set standards for confidential treatment requests by investment managers and to notify an issuer about a grant of confidential treatment involving their stock.

#### Proxy Advisory Firm Legislation

- 2022 Final Rule by SEC rescinded the 2020 Final Rule that allowed companies to review and comment on their corporate reports issued by ISS and Glass Lewis before a shareholder meeting.
- Litigation to challenge the 2022 Final Rule has been initiated by the U.S. Chamber of Commerce and the National Association of Manufacturers in Tennessee and Texas.
- Legislation to pressure the SEC to move forward with its 2019-2020 rulemaking on proxy advisory firms was very helpful in the issuer community's success in the 2020 Final Rule.
- NIRI and other associations are considering the use of a similar legislative strategy to push the SEC to re-open this rulemaking and permit companies to review and comment on proxy advisory firm reports.

### Public Company Advisory Committee

- The SEC has created industry advisory committees for many capital market participants registered with the agency.
- Currently the SEC has the following advisory committees:
  - Investor Advisory Committee
  - Asset Management Advisory Committee
  - Fixed Income Market Structure Advisory Committee
  - Small Business Capital Formation Advisory Committee
- Public companies are the only SEC registrants without an advisory committee and the SEC would benefit from issuer input on a range of regulatory issues.
- NIRI and other associations are considering legislation to require the SEC to establish a Public Company Advisory Committee.

### SEC Rulemaking: 13(d) Modernization

- In February 2022, the SEC proposed a rule to modernize the disclosure regime for 13(d) filings required when an investor accumulates 5% of an issuer's shares outstanding.
- The SEC's proposal would shorten the deadline for filing from 10 days to 5 business days.
- The SEC also proposed to include in the 5% calculation any holdings of cash-settled equity swaps (or any other derivative instrument where the purpose is changing or influencing corporate control).
- NIRI submitted a comment letter to the SEC in support of this rule proposal and discussed this rulemaking in a September WebEx call with the Corporation Finance staff at the SEC.

#### SEC Rulemaking: Short Position Disclosure

- In February 2022, the SEC proposed a rule to provide greater transparency of short sale positions.
- The SEC's proposal would require monthly reporting by investment managers of large/concentrated short positions.
- These monthly reports would be kept confidential by the Commission, although aggregated data based on these reports would be disclosed publicly, on an issuer-byissuer basis.
- NIRI supported the monthly reporting requirement in a comment letter, but expressed disappointment with the aggregation of the data, since this type of data is already available through other reporting systems.
- NIRI has recommended to the SEC that it consider disclosing investment manager-level short position information to each issuer on a confidential basis once certain thresholds have been reached.

#### SEC Rulemaking: Climate Disclosure

- In March 2022, the SEC proposed a wide-ranging rule to mandate certain climate-related disclosures by public companies.
- NIRI submitted a comment letter in June to the SEC and has been working with other associations to narrow the scope and requirements in this proposed rule.
- NIRI Board Advocacy Committee members conducted a WebEx call with SEC staff working on the climate rule in December.
- The current expectation is that this proposal will be finalized in the second quarter of 2023.

# Q&A



## Participate in NIRI's Advocacy Program

- Advocacy Ambassadors
- Advocacy Committee
- Calls to Action
- Legislative Fly-In
- More Information
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