NIRI Virtual Chapter

Program Wrap-Up

Program Title: NIRI Advocacy & the 116th U.S. Congress

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By headcount, NIRI is one of the smaller advocacy organizations with a presence in D.C., but over time has proven one of the most effective, furthering the goal of advocating easing the process for companies to access the capital markets; count the JOBS Act, important sections of Dodd-Frank, and even the original implementation of Reg FD as actions taken under the advice of NIRI. In 2019, NIRI has earned the ear of lawmakers and regulators on several key topics – but as usual, needs the help of its members to push these key issues to fruition.

Over time, NIRI Virtual has hosted occasional sessions keeping issuers abreast of important developments – NIRI National Chair and Virtual Chapter board member Ron Parham's dual role helped bring both constituencies together to produce the March 11th *NIRI Advocacy & the 116th U.S. Congress*. Pat Davidson, VP Investor Relations at Oshkosh Corp joined NIRI's advocacy lead Ted Allen, as well as Niels Holch, partner at DC-based Holch & Erickson, to discuss these key issues and what companies can do to help.

Davidson, Allen, and Holch updated the progress on several fronts important to issuers – along with what issuers can do to help:

-**Proxy advisory reform:**

What's the approach? After years of advocacy work, this issue appears to have achieved general bipartisan favor, but is now split in terms of the path forward. The Duffy-Meeks bill passed by the House last year will need to re-earn the support of this year's Congress. An alternative bill initiated by Senator Harry Reid takes a less prescriptive approach, simply suggesting that the SEC conduct a study on proxy advisor conflicts of interest and draft report review in order to inform future rulemaking, has some support but would push back rulemaking by several years. More importantly, traditional opponents in the asset management industry have softened their stance – Blackrock, in particular, has made public statements suggesting that the technology exists to give issuers draft report review capability.

What can issuers do? As proxy season begins, the SEC has stated they're looking at the issue 2Q19, and are open to hearing stories of issuers that feel their investors have suffered from inaccuracies or conflicts of interest. The SEC is open to direct discussions on the topic with staff, even for companies that may not want their views made public.

-**13D reform:**

What's the approach? 2017's *Brokaw Act*, introduced with bipartisan Senate sponsorship from Wisconsin's Tammy Baldwin and Georgia's David Perdue, proposed to limit the ability of activists to benefit from inside information on the ownership structure of a company by speeding up the disclosure requirements, shrinking the 10-day window to 4 days while requiring investors to count derivatives transactions as the

same as equity for calculating the 5% threshold. This bill is expected to be reintroduced in the current Congress, and is again likely to see support from both sides of the aisle given that both management and employees are constituencies that stand to benefit.

-*What can issuers do?* Given its origination in the Senate and the 60 votes needed to escape a filibuster, providing additional information to Senators on the impact activists have had is the best action; panelists suggested following Sen. Baldwin's lead in personalizing the impact to company employees in the state as much as possible.

-**13F reform:**

What's the approach? NIRI has continued to support the rulemaking petitions filed with the SEC by NYSE and Nasdaq to improve shareholder identification and communications by shortening the delay on reporting long positions on 13F to 2 days from its current 45 days. Similar proposals to require disclosures of large short positions by investors, as well as a faster cadence of position reporting (such as monthly on a 15-day delay), or private reporting from investors only to issuers themselves, also have support from the issuer community, but face greater opposition from the Managed Funds Association and other investor groups. On an in-session poll, 70% of issuers mentioned this as their highest ranked among NIRI's priority list.

-*What can issuers do?* The SEC has heard the concerns of the opposition about the possibility of front-running trades on long positions or retaliating against investors with short positions; issuers that describe the process of how they use position information to improve investor communication first and foremost help add to this conversation.

-**Quarterly disclosures:**

What's the approach? The SEC is currently in a public comment period reviewing the quarterly earnings process, including form 10Q, frequency of reporting, and earnings guidance. While we may not see the end of the quarterly earnings reporting cadence any time soon, there's a chance the SEC may move to limit some of the duplication between 8K and 10Q.

What can issuers do? Additional detail on the costs incurred by companies in crafting form 10Q in addition to the quarterly earnings release may help the SEC come up with its cost-benefit analysis on whether 10Q is truly a net positive for investors.

-Proxy plumbing:

What's the approach? The SEC is underway with its review of the proxy voting system, with SEC Commissioner Elad Roisman now taking point on the any changes the SEC may want to propose for future rulemaking. Panelists noted that the existing proxy voting process "is a relic of reforms enacted during the 1970s," and leaves open a number of loopholes such as the possibility of overvoting or empty voting impacting a key vote while giving issuers limited choice among proxy services providers. Investors have

grown more supportive over time, with organizations such as the CII and ICI actively involved in the proxy roundtables the SEC has conducted.

What can issuers do? The SEC's first and greatest mandate is to protect the individual retail investor – and this investor is directly impacted by the proxy communication process. Any concerns about shareholders losing their voice in the proxy process are likely to be taken directly into account in the SEC's review.